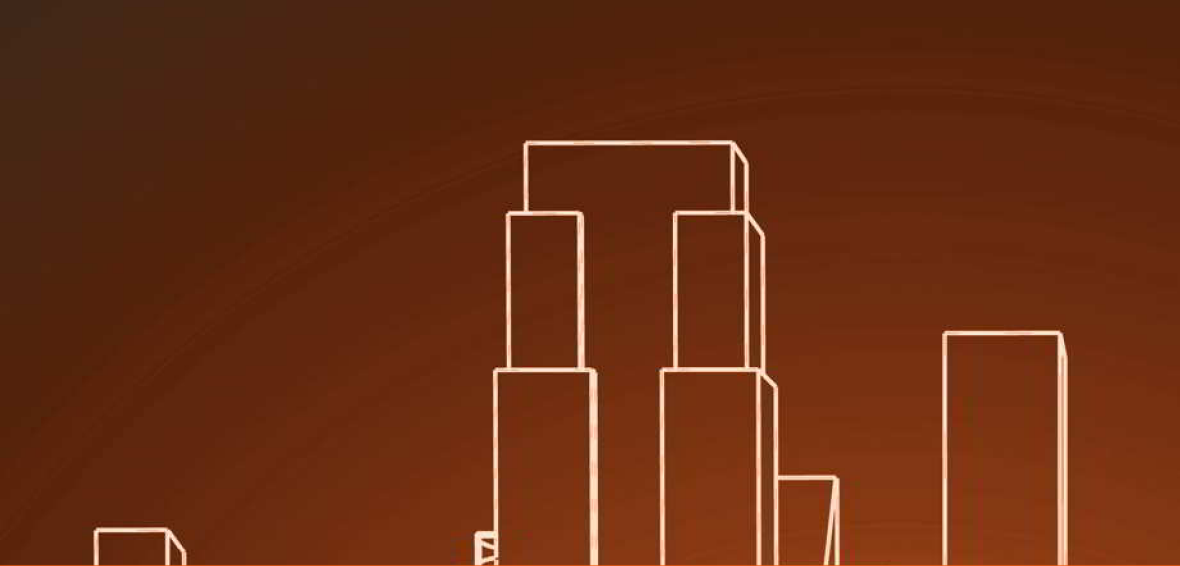




Routledge Series on Islam and Muslim Societies in Indonesia

ISLAMIC LAW AND SOCIETY IN INDONESIA

**CORPORATE ZAKAT NORMS AND PRACTICES IN
ISLAMIC BANKS**

Alfitri





**UNIVERSITAS ISLAM NEGERI
SULTAN AJI MUHAMMAD IDRIS**
SAMARINDA – KALIMANTAN TIMUR – INDONESIA
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Islamic Law and Society in Indonesia

No corporation is enthusiastic about paying tax, yet Islamic banks in Indonesia voluntarily pay corporate zakat. Why? The book analyzes corporate zakat norms and practices in Indonesia by investigating how Muslim jurists have interpreted *sharī'a* of zakat and how these have been imposed through the legislative and regulatory framework. It also presents original case studies based on sociolegal field research on the reception of the new obligations in the Islamic banks that choose to pay – and choose not to pay – what is effectively a new tax.

The book argues that the dynamics of *sharī'a* interpretation, imposition, and compliance in Indonesia are too complex to be defined using the binaries of the religious versus the secular, public versus private, or tradition versus modernity. The corporate zakat context has revitalized the existing governance strategy in Islamic legal tradition and created a shared Islamic law vision between Islam and the state. Consequently, this fusion generates a mixed legal and religious consciousness toward corporate zakat.

Addressing broader discussions on Islamic law and modernity, the book will be of interest to academics working on Asian and Comparative Law, sociolegal studies, anthropology of Indonesia, business studies of the Islamic world, Islamic/*sharī'a* economics, Islamic law and politics, Islamic legal studies, Muslim society and Islam in Southeast Asia.

Alfitri is an Associate Professor at the Faculty of *Sharī'a* and Law, State Islamic University (UIN) Sultan Aji Muhammad Idris Samarinda, Indonesia. His research focuses on Islamic Law, Law and Society, and Law and Religion in Indonesia.

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1 Islamic Law and Society in Indonesia

Corporate Zakat Norms and Practices in Islamic Banks

Alfitri

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in Islamic Banks**



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To my wife and children

Rini

Alya, Adam, and Arya



**Keluarga Besar
UINSI Samarinda**

Mengucapkan

Selamat & Sukses

Kepada

Prof. Alfitri, M.Ag., LL.M., Ph.D.

Ketua LPPM

*Atas Diraihnya Gelar Profesor / Guru Besar
Ilmu Hukum Islam*

Semoga Ilmunya Berkah dan Bermanfaat



Prof. Dr. Mukhamad Ilyasin, M.Pd.
Rektor UINSI Samarinda

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Preface

Law and society studies discuss the interrelationships between law and society and various actors, institutions, and processes. Through this lens, the law is understood as something created and practiced through a social process. Simultaneously, the law is believed to effect and affect social change and as a social institution outside of the reciprocal relationship.

The use of law and society as an approach to examining Islamic law's role as applied in Indonesia, a neither-secular nor-Islamic state, through state and nonstate actors is appropriate. Studies on the interrelation between Islamic law and society in Indonesia have reached the level of analyzing the nonlegal factors that influence the Islamization of law in Indonesia or how the Indonesian context has formed localized norms of Islamic law. However, when these studies also investigate how Indonesian Muslims experience Islamic law, they sometimes fall to the religious versus the secular opposition in examining the impact of *sharīʿa* incorporation and imposition by the state due to the lack of empirical evidence. This book goes beyond assessing the theoretical implications of *sharīʿa* incorporation into the Indonesian legal system. It also empirically tests Muslim responses on their experiences when complying with an Islamic legal norm amid multiple Islamic legal norms, actors, and sources in Indonesia to comprehend their conscience of what constitutes Islamic law: *sharīʿa*, *fiqh*, or “Islamic” statute; and why?

Applying empirical legal research as a research method in this study requires intensive field research. An empirical legal research method requires primary data and sources from institutions, rules, procedures, legal personnel, and legal subjects to understand how they operate, what effects they have, and why they behave accordingly. The field research was conducted in winter 2012 and summer–autumn 2013 in Indonesia: Jakarta, Bandung, Yogyakarta, and Padang. This is followed by more than 15 months between 2014 and 2015 in-country data analysis and report writing.

Parts of [Chapter 3](#) have appeared in Alfitri, “Bureaucratizing Fatwa in Indonesia: The Council of Indonesian Ulama and Its Quasi-Legislative Power,” *Ulumuna Journal of Islamic Studies* 24, no. 2 (2020): 367–397. <https://doi.org/10.20414/ujs.v24i2.412>. An abridged version of [Chapter 5](#)

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I am a *sharīʿa* scholar by training; my introduction to an interdisciplinary approach to studying Islamic law came from postgraduate law studies. The MA in the Islamic law program at State Islamic University (UIN) Sunan Kalijaga Yogyakarta has taught me a sociolegal approach to studying Islamic law. The opportunity to continue studying law in the LL.M. at the University of Melbourne, Australia, has equipped me with comparative law and human rights approaches. The Ph.D. Law at the University of Washington, Seattle, gave me a solid foundation to study law with a Law and Society approach that uses an empirical legal research method.

This book results from the development of my Ph.D. dissertation at the University of Washington Law School. My Ph.D. study took six years to complete. The opportunity to study law in the United States of America and complete this dissertation, which took time and required intensive field research in Indonesia, would not have been possible without various parties' generous assistance. Therefore, I wish to express sincere appreciation for a Fulbright scholarship, a Luce grant for Southeast Asia, and support from the Ministry of Religious Affairs of the Republic of Indonesia, the Education Fund Management Institute (LPDP), American-Indonesian Cultural and Education Foundation (AICEF), the American Indonesian Exchange Foundation (AMINEF), and the Provincial Government of East Kalimantan. I was fortunate to receive a Fritz/Boeing International Study Fellowship and the Graduate School Presidential Dissertation Fellowship from the University of Washington for conducting my field research and for a quarter residence on campus for dissertation defense.

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1 INTRODUCTION

In Islamic doctrine, zakat is *farḍ*, which means that it is a religious duty whose observance will be rewarded and whose neglect will be punished by God in the hereafter.¹ Islamic law requires individual Muslims to give a certain amount of their wealth to specific beneficiaries, predominantly the poor. It is like a tax on Muslims' wealth, which is imposed as a moral obligation. It is also one of the five canonical obligations incumbent upon Muslims. Confirmation of corporate zakat's mandatory status at the international level was developed late in the 1980s using *fatwā* (plural: *fatāwā*), i.e., the interpretations of *sharī'a*² to respond to the contemporary situations.

Requiring legal entities such as companies to pay zakat, however, is a controversial regulatory move. Thus, different opinions on its status as an obligation in Islam range from not requiring it to requiring it with conditions. Theoretically, then, the enforcement of a zakat obligation in Indonesia by the state would raise concerns about both the government's authority to do so and the legitimacy of the policy itself.

In Islamic history, Muslim dynasties and states have enforced zakat's general obligation by serving as the collector and distributor of zakat funds. Zakat is a form of worship in Islam and state revenue that is integrated into state fiscal policy.³ Despite Muslims being the majority population of Indonesia,⁴ the country is not an Islamic state as far as the 1945 Constitution is concerned. Islam is not mentioned as the religion of the state, and there is no repugnancy clause of the kind that makes *sharī'a* the law of the land and requires state law to conform to *sharī'a*. The authority to make Islamic law in Islam is vested in Muslim jurists/ulama, while in the modern nation-state, it resides in the state's legislative or judicial organs. Thus, there seems to be tension between Islam and the state regarding legislative authority in promulgating Islamic law. In Indonesia's case, the tension revolves around the question of authority: who gets to determine what the law of the land is and who gets to make Islamic law? This tension is heightened in cases like the imposition of corporate zakat, mainly where the state is the legislator, but ulama have not yet confirmed the corporate zakat obligation's legal status.

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Through the enactment of Indonesian Law No. 38 of 1999 and its replacement, i.e., Law No. 23 of 2011, zakat become an aspect of Islam that is officially administered by the Indonesian state. However, the law is mainly a procedural framework for Muslims who want to observe this religious duty. It does not impose an obligation on Indonesian Muslims to pay zakat but is limited to establishing and supervising zakat agencies, both state-run and non-state organizations.⁵ In the corporate zakat obligation, the imposition of corporate zakat means that it is a duty imposed by Islam, not the state. For example, in art. 2 of Law No. 38 of 1999, “[e]very citizen of Indonesia who is Muslim and is able [to pay zakat] or a legal person owned by a Muslim has an obligation to pay zakat.” Article 1(2)(5) and 4(3) of Law No. 23 of 2011 maintain this clause. Law No. 38 of 1999 also does not include penalties or other coercive mechanisms to compel zakat payment for either natural or legal persons.⁶ However, Law No. 23 of 2011 provides sanctions for unauthorized zakat collectors who collect, distribute, or utilize zakat funds: imprisonment and/or monetary fines (art. 38 and art. 41).

Given the debate about the corporate zakat status, the Council of Indonesian Ulama (*Majelis Ulama Indonesia*; hereinafter MUI) as a forum of cross-Islamic social organizations of Indonesian Islamic scholars issued a decision, stating that MUI considers it as an obligation. However, MUI has not yet promulgated that decision as a *fatwā*. The decision was reached during the 2009 Ijtima Ulama (gathering of scholars) of the all Indonesian *Fatwā* Commission of MUI and Islamic organizations (hereinafter Ijtima Ulama). MUI decreed that a company that meets the requirements of a zakat payer is liable to pay zakat, whether in its capacity as a legal person (*shakhṣiyya i’tibāriyya*) or as an agent (*wākil*) of the shareholders.⁷

Zakat levied on legal persons, more widely understood as corporate zakat in Indonesia, is a contemporary phenomenon in Islamic countries that adopt *sharīʿa* as state law, such as in Malaysia and Saudi Arabia.⁸ In classical Islamic jurisprudence, however, zakat’s obligation is imposed on every Muslim who is free, *bāligh* (has reached the age of majority), sane, and owns wealth equal to the minimum threshold of items subject to zakat through complete unencumbered ownership.⁹ The obligation of zakat may arise from business profits owned in common by Muslims, but zakat is due on each Muslim shareholder, and it becomes zakat on his/her wealth.¹⁰

The National Zakat Collection Agency (hereinafter BAZNAS) reported that corporate zakat payments had been made since as early as the 2000s, especially by the Islamic financial sector. The phenomenon of compliance has been present in Islamic commercial banks even before the Zakat Law in 1999 and the Ijtima Ulama’s decision in 2009. The trend of corporate zakat payment is also increasing lately.¹¹ If this is the case, questions surrounding the conception of corporate zakat, both in Islamic law and Indonesian law, and its implementation in Indonesia need to be investigated.

This book deals with the complex interaction between the Islamic legal system and modern Indonesia's social, political, and economic realities. Specifically, it focuses on the Indonesian state's attempts to modernize zakat norms through the independent legal reasoning (*ijtihad*) of contemporary Muslim jurists, incorporating the norms into state law and the subjects' responses toward corporate zakat obligation. This book is different from previous books on Islamic law and society in Indonesia because it offers a holistic perspective on how a modern state claims authority in the formulation and implementation of Islamic law. To this end, it employs an empirical legal approach. First, it is based on painstaking fieldwork that traces the origins of the corporate zakat idea in Indonesia by interviewing all the actors involved (e.g., religious scholars, lawyers, corporations, and government officials) and the way they compete for legal authority. Second, it also examines relevant archival material, including banks' public financial data related to corporate zakat payments. This approach gives us an insider's view of how the contemporary Islamic norm of corporate zakat is formed and how the subjects view such norms' legitimacy, primarily as the state regulates them. It also attempts to uncover the processes of *sharī'a* governance within Islamic banks that have prompted them to buy into the new scheme, even though neither the legislation nor the Islamic jurisprudential basis for doing so is strong. Moreover, it examines how Islamic banks' compliance with corporate zakat enhances the perception of their commitment to justice, equity, and social well-being among their stakeholders, mainly when corporate zakat is classified as if corporate social responsibility (CSR).

This work contributes to a growing body of socio-legal studies of the Islamic law that do not take for granted the dichotomy of secular versus religious, public versus private, or tradition versus modernity in the development of Islamic law in Indonesia (see below section for further discussion). It primarily focuses on the corporate zakat norm's creation, imposition, and compliance within Islamic commercial banks. The developments in zakat law and regulation will be situated in the broader context of Islamic law and Indonesia's society. This book's findings are significant for other aspects of Islamic law regulated by the state in Indonesia and speak to the ongoing debate on Islamic law and society worldwide. First, this book is one of the very few empirical studies that explore how Islamic norms are formed and who have the right to "make the rules" concerning Islamic economic activity. Understanding how corporations are persuaded to engage in social philanthropy is an important policy issue throughout the Islamic world because it unlocks significant welfare resources for the state. The challenge is how to underscore current public policy with Islamic legitimacy. That a non-Islamic state has been able to do this in Indonesia is remarkable. Second, it effectively solves the mystery of why Islamic corporations have bought into the new scheme, even though – as we have mentioned before – there is no firm basis for complying

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with corporate zakat obligation from both Islamic law and legislation in Indonesia. It tells how the government enrolls ulama to effect this public policy goal and how the ulama use this opportunity to enhance their influence and prestige. This book provides a new perspective on *sharīʿa* governance within Islamic financial institutions (IFI), an area that has been dominated by models developed in Islamic states.

Zakat, Law, and the State in Indonesia: An Overview

Even though Muslims are the majority in Indonesia, the *Constitution of Indonesia 1945* (1945 Constitution) does not reference Islam as “a” or “the” national religion whose doctrines must be obeyed by the state. In particular, *sharīʿa* is not mentioned as a source of legislation. The effort to bring *sharīʿa* into the 1945 Constitution during the preparation of Indonesian Independence by some Muslim leaders who sat in the Investigating Committee for Preparatory Work for Independence in 1945¹² – through imposing the obligation for adherents of Islam to practice Islamic law in the Jakarta Charter – failed.¹³ Instead of Islam, Indonesia adopts *Pancasila* (five fundamental principles) as the state ideology. The first principle of Pancasila, “Belief in Almighty God,” embodies the state’s recognition of religion’s formal role in national life.

Therefore, the state has never been wholly separate from religion since the Indonesian Republic’s founding in 1945. Although religious affairs are a personal matter for each religious adherent, the government also plays a role in their administration through the Ministry of Religious Affairs (MORA), established on January 3, 1946. The Ministry administers Islamic affairs and five other religions recognized by the state, namely, Catholicism, Protestantism, Hinduism, Buddhism,¹⁴ and since 2000, Confucianism. Concerning the *sharīʿa*, some Islamic jurisprudence elements concerning marriage, divorce, inheritance, *waqf* (Islamic trust), and *hibā* (gifts) have been absorbed into positive law in Indonesia through religious courts’ decisions. This Islamic legal institution has existed since the Dutch colonial period.¹⁵

State intervention in the administration of religion has often provoked bitter debate in the Legislature and the public, especially when policies and legislation are deemed to privilege a particular religious denomination over others or primarily affect Muslims in Indonesia involving some interpretation of *sharīʿa*. For example, when the government under Suharto proposed a national marriage law draft without consulting the MORA in 1973, the proposal was vehemently opposed by Muslim representatives in the Legislature, and angry protesters formed outside the House. The proposal was accused of being against the Islamic doctrine on marriage directly because it stated that a valid marriage existed when the statutory requirements were fulfilled (*inter alia*, parties’ consent and the age of majority is reached), conducted in front of an official registrar, and then recorded by

the official registrar. The opponents of the proposal maintained that, under the Shāfiʿī School of Islamic law, which is widely recognized in Indonesia, a marriage is valid when the offer (*ijāb*) of the bride's guardian and the acceptance (*qabūl*) of the groom are declared, and two valid witnesses are present during the marriage ceremony. The draft was enacted as Law No. 1/1974 on Marriage after the Legislature reached a compromise with orthodox demands, wherein all provisions contrary to Islamic doctrine were removed. Thus, marriage registrations, for example, are no longer required for valid marriage requirements; if Muslims want their marriage to be legal according to state law, however, they need to perform it before the official registrar and then register it.¹⁶

Things were different when the government enacted the Zakat Law in 1999 and made legal persons, including corporations, the subject of zakat obligations in Indonesia. The imposition of corporate zakat went on without controversy in Indonesia. Further, the obligation of corporate zakat has been observed voluntarily by some companies in Indonesia. Unfortunately, research on the corporate zakat duty from the standpoint of zakat as a concept and a regulatory duty implemented in Indonesia is quite limited. Existing literature simply covers the pros and cons.¹⁷ No study has yet explained why and how such a novel interpretation of the zakat obligation in Islam could be incorporated into Indonesian law, under what authority the state can implement and enforce it, and the role of the ulama in the process of incorporating this obligation into Indonesian law.

On its implementation, most research on corporate zakat in Indonesia focuses only on accounting issues.¹⁸ According to Adnan and Bakar, current accounting standards adopted by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Malaysian Accounting Standard Board (MASB) are not compatible with the genuine concept of zakat in Islam. Accounting standards have treated zakat assets and zakat paid by business organizations as several “expenses” in a company income statement. Treating zakat as expenses is against the concept of ownership in Islam, based on which the legal obligation of zakat is laid down. The absolute owner of the property is God. The zakat payer is entrusted with the property because of her fruitful labor. In that property, there is a right of the poor. Hence, zakat payments should be treated as a dividend instead of as a non-operating expense because “dividend” is the closest category of the item available in the present financial statement which conveys the purpose of zakat payment, i.e., “to fulfill one’s obligation towards the real owner of wealth by delivering the trusted wealth to the designated categories of people.”¹⁹ Regarding Indonesia, Adnan and Bakar did not analyze the accounting treatment for corporate zakat prepared by the Indonesian Institute of Accountants because it had not been issued when their article was published.²⁰

Atmahadi writes that since Indonesia lacks accounting standards for corporate zakat, there are some differences and deficiencies in reporting it

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within Islamic commercial banks. As a result, the amount of zakat paid is estimated to be short by 0.0775% because the calculation is based on the solar year, which is longer than the lunar year (which is the standard of time in Islamic law). Furthermore, the potential of corporate zakat funds in Islamic commercial banks is also unverified because they do not strictly follow two available corporate zakat calculation methods, i.e., the earning before tax method or the AAOIFI net assets method.²¹

The objectives of this study go beyond financial accounting for corporate zakat in Indonesia. It asks the following questions: who holds Islamic authority in Indonesia? What are the politics of *sharī'a* implementation in a regulatory field such as zakat? Moreover, how do those affected view the legitimacy of regulating Islamic doctrine in Indonesia? Thus, this study seeks to complement and fill in the gaps left by earlier scholarship on zakat's concept and practice in Indonesia.

Regarding Islamic authority in Indonesia, Otto needs to be cited here, for he evaluates the process of incorporating *sharī'a*-based rules in national legal systems of twelve Muslim countries, including Indonesia, and then concludes that the traditional authority of *sharī'a* is superseded by state authority.²² He observes that Muslim countries have replaced the old structure of *sharī'a* authority with new legal institutions, except in Saudi Arabia. Muslims seem to trust the new legal institutions more than the old structures of *sharī'a* authority in legislation and governance. Officeholders mostly make critical legal decisions in contemporary Muslim majority states instead of the ulama.²³ In focusing on incorporating family law and criminal law into the Indonesian legal system, Otto seems to generalize his findings to all aspects of Indonesian law, including the development of Islamic business law in Indonesia. In doing so, he fails to analyze the formation of *sharī'a* economic laws outside formal state institutions, which has been conducted primarily by MUI through the issuance of *fatāwā*.

Why have MUI *fatāwā* been so influential in administering Islamic legal traditions within the *sharī'a* economy, despite not holding a monopoly on *fatāwā* issuing authority in Indonesia? According to Ichwan, the shift in Indonesian politics from an authoritarian regime to a more democratic state has brought about MUI changes. MUI has begun to play a political role through the devices of *fatāwā*, especially *tawsiyya* (admonition). The shift has increased MUI's independence, enabling it to participate in debates about Islam's role in Indonesia actively.²⁴ Subsequent studies, including those of Nasir and Asnawi,²⁵ and Gillespie,²⁶ also make similar findings, arguing that MUI has become more independent from state hegemony in the aftermath of Suharto's New Order regime. With its new independence, MUI is now seen as the most authoritative Muslim institution in Indonesia in the sphere of *fatāwā* production.²⁷

However, the studies above focus on *fatwā* production in MUI and its influence on Indonesia's Muslim thought. Ichwan, Hosen,²⁸ Gillespie, Nasir

and Asnawi, Hasyim, and Sirry²⁹ look at *fatwā* as a means by which MUI maintains its role in a rapidly changing political and religious environment. Gillespie and Olle³⁰ note MUI's increasingly conservative views on moral and social issues and its hostility toward unorthodox minority Islamic groups. However, the expansion of MUI's influence and authority in the aftermath of Suharto's demise remained largely unexplained until Lindsey published his 2012 study.³¹

According to Lindsey, it is the regulatory changes since Suharto's fall in 1998 that have allowed MUI's formal role in the state system for the administration of Islamic legal traditions in Indonesia to expand, especially in the field of the *sharī'a* economy (*mu'āmalāt*). These regulatory changes have intensified MUI's influence and the legal authority of its *fatwā*. MUI thus acquired new institutional roles, even monopolies in some cases, when it comes to regulating *halāl* certification, Islamic finance, and the hajj pilgrimage. He argues that MUI has now begun to accrue quasi-legislative powers resembling those enjoyed by state ulama councils and state *mufitīs* (jurisconsults) elsewhere in Southeast Asia not previously available to any modern Indonesian *fatāwā*-producing body.³² Lindsey admits that he did not study how MUI, especially its *Fatwā* Commission, exercise quasi-legislative power. This study extends his preliminary findings by examining MUI's attempt to monopolize *fatāwā* production in Indonesia.

On the politics of *sharī'a* implementation in Indonesia, Salim and Azra, for example, conclude their edited collection of essays on the state and *sharī'a* (mainly on cases of Islamic family law and Religious Courts law) from the perspective of Indonesian legal politics with the following statement:

By controlling Islamic law, the Indonesian state has successfully instituted a new 'reception theory' – that the implementation of *sharī'a* is officially legitimate only if it has been ratified as national positive law. This is true for some of the contents of *sharī'a* that have been put into bureaucratic formulae; and its emergence into legal force is possible only with the government's political will.³³

Butt adopts this argument in his study on the Constitutional Court decisions on Islamic law in Indonesia: the constitutionality of polygamous marriage restrictions and the Religious Court's limited jurisdiction in adjudicating Islamic criminal offenses. He argues that the Court recognizes Islamic law but only in specific narrow fields by excluding public and criminal law and denying Islam's legal authority's independence.³⁴ Although adopting a new reception theory might be a legitimate way to characterize the state's politics toward *sharī'a* implementation in Indonesia, it risks ignoring the more subtle political and religious nuances and influences that have shaped the regulatory outcome in the zakat domain. Moreover,

it tends to disparage (or underestimate) the ulama's role during the drafting and deliberating of the law.

This book considers the politics of *sharī'a* implementation in light of data gathered through interviews with informants, both drafters, and ulama, involved in drafting and deliberating the Zakat Laws as well as the archives of their meeting minutes. This study probes the more subtle political and religious nuances and influences that have shaped the zakat domain's regulatory outcomes based on these interviews and primary documents. In addition, this process has yielded an alternative explanation of the politics of state policy on *sharī'a* implementation in Indonesia, which has previously been depicted as no more than the re-adoption of the Dutch colonial policy of reception theory. This theory was developed from Snouck Hurgronje's idea, an adviser of Islam for the Dutch colonial government, about the centrality of customary law (*adat* law) for indigenous Indonesians (*pribumi*); consequently, Islamic law is only applied to *pribumi* Muslims if it had become part of the *adat* they belonged to.³⁵

However, this book goes beyond the conception of the corporate zakat obligation in Islamic law and state law in Indonesia. It also empirically examines the phenomena of subjects' compliance with corporate zakat, despite its ambiguous legal and theological status. This kind of empirical legal study has lacked in the scholarship of Islamic law and society in Indonesia. In his study on the Islamization of law in Indonesia, Salim concluded that zakat legislation would create legal dissonance. By making zakat centrally administered and obligatory through a modern legal system, the government has created ambiguity since, implicitly, an individual Muslim would not be permitted to subscribe to alternative interpretations that do not comply with its standard.³⁶ In another study, Salim writes that the enactment of Law No. 38/1999 on zakat management has changed the practice of zakat in Indonesia structurally and institutionally. Two possible outcomes of the shift, namely, zakat collection, will become compulsory and centralized, or zakat will become an intricate part of taxation law, losing its transcendental – or spiritual – dimension. According to Salim, the shift in zakat practice is more likely to result in the second outcome. However, Salim's dichotomous analysis of zakat legislation's impact falls short because he did not study zakat payers' perception toward the state's interventions in zakat management. The perception toward zakat bureaucratization is an essential dimension of the new regulatory system that must be studied before concluding it. Besides, corporate zakat imposes an obligation on legal persons, Islamic banks, which require careful considerations when examining their perception of the zakat norms and their reasons for complying with them.

Islamic banking is distinct from its conventional counterpart because it ostensibly runs on a holistic business model. It is based on Islamic moral values and jurisprudential traditions, and thus, *prima facie*, its operation must comply with *sharī'a*. However, Islamic banking's current

remarkable growth and expansion worldwide has been accompanied by some unintended consequences. These include unethical trends in product innovation (e.g., merely replicating conventional banks' debt-like financial instruments instead of developing the profit-and-loss-sharing modes required by *shari'a*).³⁷ The unintended consequences have contributed to its failure to achieve its normative and legitimizing goals of enhancing justice, equitability, and social well-being.³⁸ Scholars in this field argue that it is ineffective legal and regulatory frameworks for the *shari'a* governance of Islamic banking that have caused these adverse consequences. A case in point is the phenomenon of "*fatwā* shopping," seeking favorable *fatwā* (legal opinion) to provide approval for an otherwise dubious Islamic banking product, or seeking out ulama receptive to certain forms of the transaction.³⁹ Another case is the inability of ulama to control what they are supposed to control, that is, *shari'a* compliance, because managers attempt to position the *shari'a* compliance of their institutions as a means to maximize profit rather than to follow authoritative religious opinions.⁴⁰ Current scholarship, however, has seen chiefly managers as resistant actors for *shari'a* compliance. None of these works has assessed managers' initiatives and other actors and institutions related to Islamic banking to achieve their objectives. This book fills this gap by investigating the phenomenon of voluntary compliance with corporate zakat in Islamic banking in Indonesia, where the management plays the central role in ensuring compliance. It examines how Islamic banks' compliance with corporate zakat enhances perceptions of justice, equitability, and social well-being among their stakeholders.

Corporate Zakat as a New Obligation in Islamic Law

As mentioned earlier, the obligation of corporate zakat is unprecedented in Islamic law. Therefore, is it impossible to interpret the *shari'a* rulings concerning zakat and expand its obligation to a legal person?

Zakat (*zakāt*) is a noun in Arabic derived from the verb *zakā*, meaning to purify. Terminologically, zakat signifies Muslims' obligation to give a specific amount from their wealth – with certain conditions and requirements – to specific beneficiaries.⁴¹ By giving up a portion of their wealth, Muslims are regarded as having purified their wealth and souls from the selfishness and greed which restrains them from alleviating others' sufferings. Likewise, zakat received by the beneficiaries is considered to sanctify them from jealousy and hatred of the rich.⁴² Zakat is regarded as the effective means of income redistribution in Islam because it tries to solve poverty and punish those who hoard, monopolize, and corner markets.⁴³ It is believed that under the ideal scheme (wide observance of zakat), the rich would not become poor, and the poor would cease to be poor. Cragg writes that zakat "stimulates popular purchasing power and thus quickens the market, sharpens production, boosts profits, and so finally rewards the payer of zakat

and gives him a still higher income out of which to disburse again.” In this regard, zakat has been deemed to be an Islamic remedy to the supposed evils of both capitalism and communism because zakat changes the central contradiction in capitalism to a “happy spiral” of redistribution. It responds to the tenets of communism by affirming the right to possess with the charitable obligation.⁴⁴

There are two types of zakat in Islam: *zakāt al-fiṭr* and *zakāt al-māl*. *Zakāt al-fiṭr* is a flat rate imposed on every Muslim – except those destitute – equivalent to the amount of a little above 2 kg of his/her staple food or its equivalent monetary value due on the end of the fasting month (Ramadan).⁴⁵ Thus, every Muslim – including poor Muslims, as long as they have leftover food for the day after Ramadan – must pay *zakāt al-fiṭr* for himself/herself and their dependents to complete their fasting. In its practice from early Islam to the modern era, *zakāt al-fiṭr* is usually paid directly to the poor without intervention from the state.⁴⁶

Unlike *zakāt al-fiṭr*, *zakāt al-māl* is only levied upon Muslims whose wealth exceeds a threshold (*niṣāb*) with the rate ranging over 2.5%, 5% or 10%, contingent on items subject to zakat. The *zakāt al-māl* is like a wealth tax on Muslims who possess certain liable assets such as gold, silver, cash, livestock, or agricultural products. Before calculating the *niṣāb*, the basic needs of a zakat payer and his/her family are considered; financial obligations and due debts should also be paid first. Further, the possession of wealth should exceed one year (according to the lunar calendar), and *niṣāb* is counted at the end of the year following the acquisition.⁴⁷

The criteria of *niṣāb* are based on several Ḥadīth which set a certain minimum amount of items that are subject to zakat, and they exempt Muslims who own less than these minimum requirements from the liability of zakat payment.⁴⁸ The *niṣāb* differs from one item to another depending on the category to which the item belongs. Based on the information from the Qurʾān and Ḥadīth, which were then systematized by ulama, the categories of items, their *niṣāb*, and rates can be summarized as follows:⁴⁹

This table (Table 1.1) mainly depicts the mainstream thinking about zakat in Islam and provides only a few details, especially livestock items. Whether the existing concept of zakat may cover enormous changes in the pattern or structure of wealth and income within the modern economy has been debated by Islamic jurists. This issue becomes relevant when we try to understand how and to what extent new concepts such as corporate zakat might be accepted in the modern application of zakat law and regulations.

Questions of change over time are also relevant for the concept of zakat beneficiaries. According to the classical formula, the proceeds of zakat must be distributed to one of the eight beneficiary groups determined by the Qurʾān. These groups are (1) the poor (*al-fuqārā*), (2) the destitute (*al-masākīn*), (3) the people who are appointed to administer zakat (*al-ʿāmil*), (4) the people who need to be helped because they are newly converted

Table 1.1 Traditional Items Subject to Zakat, *Niṣāb*, and Rate

No.	Category	<i>Niṣāb</i>	Rate
1	Main types of fortune that are recognized in the Prophet's time:		
	a Livestock		
	1. Camels	a. 1. 5 Camels	a. 1. 1 Goat age ≥ 2 ; or 1 sheep age ≥ 1
	2. Cows	a. 2. 30 Cows	a. 2. 1 Cow age >1 but <2
	3. Sheep	a. 3. 40 Sheep	a. 3. 1 Goat age 2 or 1 sheep age 1
	b Inventory of trade	b An amount equal in value to 85-g gold	b 2.5%
	c Gold	c 20 Dinar of gold (a golden currency unit equals 4.25 g)	c 2.5%
	d Silver	d 200 Dirham of silver (a silver currency-cum-weight unit equals 2.975 g)	d 2.5%
2	Savings of income which are yielded from items above of wealth after one fiscal year (lunar calendar)	An amount equal in value to 200 Dirham of silver or 20 Dinar of gold	2.5%
3	Output of agriculture	5 <i>Wasq</i> (Arabic measurement for grain volume, which takes 653 kg or 750 kg in other literature)	– 10% for output irrigated by rivers, canals, or rain – 5% for output irrigated from well water which is extracted by human or animal power
4	Found treasures and minerals extracted from the ground	An amount equal in value to 200 Dirham of silver or 20 Dinar of gold	20%

Source: compiled from al-Qaradawi, "*Fiqh al-Zakah*"; al-Tayyar, "*al-Zakah*"; Kahf, "*Fiqh of Zakah*."

or about to convert to Islam, (5) the captives (or, some say, the slaves), (6) debtors, (7) those who are in the path of God, and (8) travelers.⁵⁰ When zakat becomes a part of a modern fiscal system, can zakat funds be utilized beyond these eight beneficiary groups?

Zakat is one topic in Islamic jurisprudence (*fiqh*) that originates as a concept from two primary sources of *sharīʿa*: the Qurʾān and Ḥadīth.

The verses of the Qurʾān related to zakat only give general information: the obligation of zakat and its purpose, the virtues of zakat in advancing social justice, and the beneficiaries of zakat. According to al-Qaradawī (b. 1926), the Qurʾān style, which conveys a concept in general, is in line with its nature as the fundamental source of Islam. If it were stipulated in detail, its application would be complex because society changes.⁵¹

The Prophet Muhammad functioned as the clarifier and exemplar of the Qurʾān. The Prophet explained which items were subject to zakat specified their *niṣāb* and rates, and gave further details on zakat payers and zakat recipients' condition with his authority. These Ḥadīths can be found in many places in Islamic jurisprudence literature in the chapters concerning zakat. However, Ḥadīth as the second source of Islamic law is limited as a source for contemporary reasoning on the issue. The Prophet Muhammad passed away fifteen centuries ago, and the Islamic world is now a world religion comprising many cultures and languages other than Arabic. This situation, especially during the modern era, has often led to the demand for a new interpretation and approach to zakat. For instance, the Prophet only mentioned livestock or agriculture outputs as being subject to the alms tax. These comprise items familiar in the Middle East, such as camels, cows, sheep, dates, wheat, and barley.⁵² What about other livestock or agriculture products that are being bred and cultivated nowadays? Likewise, savings at the Prophet's time were based on sales of livestock, agriculture, or trade. What about new occupations such as doctors, lawyers, or corporate managers, yielding enormous incomes and producing significant savings? Are their incomes not subject to zakat?

The device of *ijtihād* solves the gap between the primary sources of *sharīʿa* and contemporary realities. As the secondary source of Islamic law, *ijtihād* signifies the discretionary exercise of a thoughtful, weighed, and reasonable opinion of a Muslim jurist.⁵³ By employing *ijtihād*, ulama have adapted the concept of zakat to circumstances in which they live – to some extent, they also formulate concepts of zakat which cover future developments – and this adaption derives from the Qurʾān and Ḥadīth because the new concept of zakat is concluded from them.

As a result, new forms of wealth and income are included in the items subject to zakat. They are personal debts, jewelry, horses, other domestic animals, and herds sustained on fodder, honey, other animal products, and agriculture products not mentioned in the Ḥadīth.⁵⁴ The reason underlying this is growth. Items such as horses, herds sustained on fodder, and other animal products will grow and increase, while other items such as personal debts or jewelry potentially grow if they are exchanged. Thus, some items, for example, agricultural products, are a result of a growth process.⁵⁵ Further, they are kept not only for personal use but also for producing benefits. Thus, if savings from this new wealth or income have reached the minimum requirement of items subject to zakat, then zakat is due on the items.

Thus, the condition of growth becomes the critical concept for Muslim jurists in assessing whether a new form of wealth or income is subject to zakat. Epistemologically, this condition is deduced from the Prophet's explanation about items subject to zakat in a Ḥadīth that states that growth either actually or potentially is what such items have in common.⁵⁶ In contemporary interpretations, some ulama, such as Abdul Aziz al-Khayyat, a leading Jordan Islamic scholar, and Masdar F. Mas'udi in the Indonesian context, argue that the traditional beneficiary group can be extended into any social welfare programs. Thus, giving zakat means that a Muslim will transfer the ownership of her property to the beneficiaries. It is not merely a matter of giving donations because zakat is an obligation, and the money or goods of zakat are a right of God's beneficiaries through the zakat payers.⁵⁷ The exclusive proposition of *zakāt al-māl* beneficiaries has also been challenged. For instance, al-Khayyat argues that the phrase *al-fuqārā'* means "all the (category of the) poor" in Arabic. Therefore, the beneficiaries must include the non-Muslim poor.⁵⁸

The use of *ijtihād* to liberally develop the zakat concept is made possible given the zakat's dualistic character. Zakat is an integral part of religious ritual and one of the five Islamic canonical obligations and functions as a substantive legal sphere in the field of tax law in Islamic jurisprudence.⁵⁹ This dual characteristic has made zakat unique among all branches of law in Islam because even though the zakat obligation falls under the classification of rituals of worship (*ʿibāda*), its substantive legal sphere falls under the aegis of social transactions (*muʿāmalāt*). Muslim jurists maintain that interpretations of the concepts of *ʿibāda* are limited by the Islamic legal maxims (*qawāʿid al-fiqhiyya*)⁶⁰ that read any type of worship as prohibited unless there is a ruling in the texts of Qurʾān and Ḥadīth that confirm them. Conversely, *muʿāmalāt*, which governs horizontal relationships between human beings, provides a significant amount of elasticity in interpretation because the legal maxims say that every act is considered permissible unless there is a ruling mentioned in the texts of the Qurʾān and Ḥadīth that explicitly prohibits such acts.⁶¹ Therefore, the substantive law of zakat is acceptable for progressive interpretations according to the modern economy, so long as the spirit and principle of the *sharīʿa* are preserved. The problem is: Does expanding the zakat obligation to legal persons, such as corporations, denotes the use of *ijtihād* in the sphere of *ʿibāda* (formal ritual worship) or *muʿāmalāt* (social transactions)? This question is relevant when we investigate the conception and implementation of corporate zakat as a new social policy regulated by the state.

Hence, going back to the earlier question, "is it impossible to interpret the *sharīʿa* rulings concerning zakat and expand its obligation to a legal person?" The answer is affirmative. Expanding the zakat obligation to legal persons such as corporations denotes the use of *ijtihād* performed by Islamic jurists.

Corporate Zakat as a Legal Norm in Indonesia

Islamic law is the quintessential jurists' law because it was developed and maintained by individual Islamic jurists. Hence, how could a *sharī'a* norm become a legal norm in a non-Islamic state?

Islamic jurists own the authority to interpret *sharī'a* because of their knowledge of the epistemology of Islamic law.⁶² There is a widespread belief that Islamic law is the law of God, and God's authority backs obedience to the law. The answer relates to the hermeneutic process of God's words becoming law. The Qur'ān as God's word did not reveal law as such but contains only textual signs or textual indications of God's ideas on specific actions. These textual signs or textual indications obtain their legal significance only after their meanings are understood. Thus, if Islamic law says one cannot do X and Y actions, the authority backing the very stipulations of X and Y are not God's alone, if at all, because He never revealed these provisions.⁶³ The human agents are responsible for the provision because they interpreted the textual signs or textual indications from God. These human agents are called Muslim jurists, and their efforts to derive a rule of divine law from the revealed texts, i.e., the Qur'ān and the Ḥadīth, are called *ijtihād*. Islamic law, therefore, is characterized as the jurists' law because Muslim jurists carry out the construction of Islamic law (i.e., its methodology and constitutive elements) and because they have sustained it for over a millennium.⁶⁴

Religious authority is insufficient to explain the authority held by Muslim jurists because this question becomes complicated when we consider Islamic theologians and mystics. None of these religious scholars attained, nor even aspired to, carriers of legal authority, despite the religious authority that they enjoyed. Instead, the jurists gained this status because of their epistemic authority, i.e., the authority acquired through knowing the law and how it was derived, interpreted, and applied from its source: God's textual signs or indications.⁶⁵ This epistemic authority worked through the entire legal hierarchy of Muslim jurists: from the founders of the primary Islamic legal schools (Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī)⁶⁶ to the *muqallid*, or "those who practice *taqlīd*," i.e., following, reinterpreting, and applying the legal doctrine that the school eponyms had developed.⁶⁷

Muslim jurists, then, serve two functions: as a source of legal authority and as agents of maintaining continuity and mediating change in Islamic law. In Islamic law history, these two functions were mainly assumed by jurisconsults (*mufīī*) and author-jurists. A jurisconsult answers all legal questions addressed to him from all walks of Muslim life. These questions often came from a lawsuit brought to him by the judge (*qādi*) or litigating parties. The *fatwā* seekers respected and were influenced by what the jurisconsult said on the matter in question.⁶⁸

An author-jurist composed Islamic legal treatises, which were consulted by a judge when adjudicating a case. These works became the standard

reference for judges because they contained the school's authoritative doctrines of Islamic law followed by that judge. Besides speculative interpretation of the revealed texts, an author-jurist also used the jurisconsults' *fatwā* in constructing his materials.⁶⁹ The product of an author-jurist's work varied depending on the level of his *ijtihād*. They range from the handbooks of Islamic guilds developed by the school eponyms (or in some cases by their pupils), *fatwā* collections, to commentaries and super-commentaries and *mukhtāsar* (an abridgment of rulings of a guild that must be followed by lower rank *mujtāhid* within the school, as a matter of authoritative precedent).⁷⁰ The jurisconsults also used these law-manuals and extensive compendia of the law in preparing their *fatwā*, mainly if they lived after the era of school eponyms.⁷¹ The combination of the jurisconsults and the author-jurists' epistemic work has authorized Islamic law and legitimized it since its formative stage in the seventh–ninth centuries.⁷²

The established mechanism for administering Islamic jurisprudence has broken down across the Muslim world in the modern period due to the western colonialization of Muslim countries and the replacement of *sharīʿa* with western codes, except in family law.⁷³ Classically trained jurists are no longer considered the only authoritative interpreters of *sharīʿa* and their *madhhab* doctrines. Traditional methods are also questioned in the modern world. Thus, any agreement regarding Muslim jurists' authority collapses,⁷⁴ as seen when Muslim countries gain their independence and want to Islamize their laws. Instead of promulgating the *fiqh* as the law of the land, the state gives its organs authority, which often does not apply Islamic legal theories when drafting the law.⁷⁵ According to some Islamic legal historians, unlike the traditional Muslim jurists, modernist jurists did not strictly follow the legal methodology of *sharīʿa*, which involves the four sources of law: Qurʾān, Ḥadīth, the analogical deduction (*qiyās*) and scholarly consensus (*ijmāʿ*). Instead, eclectic devices (like *takhayyur* and *talfīq*) and extensive use of the utility principle or public interest (*maṣlaḥa*) were dominant in the modernists' methods. These eclectic devices arbitrarily chose legal rules from a variety of sources.⁷⁶

Therefore, the Islamic world experienced a rupture of Islamic authority between the traditional Muslim jurists who hold the authority in interpreting *sharīʿa* and the state, some of which claim the authority to promulgate Islamic law (legislation/codification or *qānun*). As a matter of historical fact, the “rupture” started well before the 20th century. This authority conflict is partly solved with *siyāsa sharʿiyya*, where ulama and the government create and share Islamic law vision.⁷⁷

Siyāsa is an Arabic word that means wisdom in the management of public affairs. *Siyāsa* includes the promulgation of rules, selecting rules of decision for courts and enforcing a particular legal norm by a ruler. A ruler's policies and governmental actions (his *siyāsa*) might naturally be based on non-Islamic considerations. *Sharʿiyya* is the adjective of the Arabic word *sharīʿa*, and it conveys something related to or consistent with

the *sharī'a*.⁷⁸ *Siyāsa shar'īyya* thus means statecraft or governance under *sharī'a*, either in legislation or adjudication.⁷⁹ Ibn Taymiya (1263–1328), the pioneer of the theory, stated that the theory of *siyāsa shar'īyya* could be used to justify the enactment and enforcement of statutes by the state as long as their contents do not go beyond limits set by ulama/Muslim jurists and they promote the public welfare.⁸⁰ According to Vogel, Ibn Taymiya's doctrine on *siyāsa shar'īyya* is logical and pragmatic in terms of reconciling the sovereignty of God versus the sovereignty of the state in law-making, because employing *siyāsa shar'īyya*

[the] excesses of rulers may be curtailed and *sharī'a* legitimacy extended to actual states. In effect, his doctrine [*siyāsa shar'īyya*] offers rulers *sharī'a* legitimization in return for a greater share of power for 'ulama; it offers 'ulama greater *sharī'a* efficacy at the cost of their being implicated further in affairs of state.⁸¹

There are two critical actions in *siyāsa shar'īyya*. The first is the identification of universal rulings and goals of the law through textual analysis of the significant sources of *sharī'a* (the Qur'ān, Ḥadīth literature and rules ratified by consensus, or *ijmā'*). Ulama conduct the process of identification using a process which involves either *ijtihād*, the discretionary exercise of a thoughtful, balanced, and rational opinion of on the part of the jurist regarding the significant sources of *sharī'a*, or *taqlīd* (following authoritative precedents of the *Sunnī* schools of law).⁸² This first step of identifying universal rulings and goals of the law is sometimes followed by deciding on a particular ruling: whether, for instance, a legal person is obliged to pay zakat.⁸³ The second is the promulgation of this particular ruling on zakat as state law and regulation, in the case where the state judges that the ruling would advance public welfare. In addition, through its legislature or formal institutions, the state might also produce new zakat rules that would advance the aggregate public welfare.⁸⁴ Public welfare in Islamic jurisprudence is known as the concept of *maṣlaḥa*. According to some leading jurists, *maṣlaḥa* constitutes the core objectives of the *sharī'a* (*maqāṣid al-sharī'a*).⁸⁵ There are five *maqāṣid al-sharī'a*: to safeguard the faith of people, their lives, their intellect, their posterity, and their wealth.⁸⁶ These core objectives are intended to promote the welfare of human beings.⁸⁷

Thus, theoretically, *siyāsa shar'īyya* requires direct cooperation between ulama and the ruler in order to ensure that the statute fulfills the requirements of *sharī'a* legitimacy as well public affairs legitimacy. Practically, however, the ulama's work to ensure *sharī'a* legitimacy can be simply a negative check on the statutes, as long as they accept that the statutes comprise Islamic contents.⁸⁸

Some Muslim countries institutionalize *siyāsa shar'īyya*, such as the office of the Grand Muftī in Egypt (*Dār al-Iftā*) and the permanent Committee for Islamic research and *fatwā* in Saudi Arabia.⁸⁹ Muslim countries that do

not institutionalize *siyāsa sharʿiyya* or have no clause stipulating “*sharīʿa* as a/the source of law” in their constitution are deemed to have replaced the old structure of *sharīʿa* authority with new legal institutions. According to this opinion, Muslims trust the new legal institutions more than the old structures of *sharīʿa* authority in law and governance. As a result, critical legal decisions today are made mainly by office holders of the state instead of the ulama.⁹⁰ Scrutiny of the legislative and regulatory process in particular Islamic countries may reveal a different conclusion, especially on how the ulama’s opinions (*fatwā* and admonitions) are considered in formulating public policy cases, including zakat, in Indonesia.

Methodological Notes

This book is based on qualitative research, which uses a case study as a research strategy. It is used because the research questions are related to an empirical inquiry: how the authority issue in Indonesia’s Islamic law is managed during the corporate zakat interpretation and imposition and how the legitimacy of corporate zakat *fatwā* and law is perceived when the subjects decide to comply/not to comply with it. These questions focus on a contemporary set of events/phenomena whose occurrence and outcome lie outside the author’s control.⁹¹ A case study as a research strategy can cover contextual conditions.⁹² The ability to cover the contextual conditions is critical for understanding why corporations in Indonesia comply/do not comply with a corporate zakat duty.

This research project uses multiple sources of evidence,⁹³ such as documentation, interviews, and archival records. It traces the process of the creation and incorporation of corporate zakat duty in Indonesian law. Archival records were mainly used to collect evidence on arguments and reasoning underlying some legal products, such as the *fatwā* of MUI, Law No. 38 of 1999, and Law No. 23 of 2011. The validity of data acquired from the archival records is then triangulated with evidence collected from documentation such as news clippings related to the events and interviews with people involved in *fatwā* deliberations and the Law drafting process. For this purpose, the author visited the Indonesian Parliament, the Directorate of Religious Courts of the Indonesian Supreme Court, and the MUI secretariat to collect archival records and conduct open-ended interviews.

For the case studies on Islamic commercial banks’ compliance with corporate zakat duty, I traced the companies’ decision-making process regarding paying the corporate zakat. I visited each head office of the Islamic Commercial Banks in Jakarta and submitted a formal request to research their banks. For BJBS, whose head office is located in Bandung, I sent an e-mail through their website “contact us” and was answered by the corporate secretary division staff. The research requests mainly went through the human capital division as all research requests are handled by this division, except for BMI, a specific institute for research and training, i.e.,

the Muamalat Institute. Data gathered from the second-round fieldwork is used for [Chapters 5, 6, and 7](#).

Interviews were conducted in bank offices during office hours. Some informants agreed to receive follow-up questions by e-mail or text messaging for essential questions not covered during interviews, comparing new information acquired during the latest interview and triangulating information from archives. The instrument used was an interview guide. I submitted a request for archives to the banks. Since most significant archives such as financial reports, annual reports, and Good Corporate Governance reports are available online, these archives were downloaded from the banks' websites. Some archives, such as shareholders' annual meetings given by the informants, were also available online if the banks have a "Tbk" status (public offered status). Others without a public-offered status considered the Annual Shareholders' General Meeting's decisions as classified material.

Data was analyzed qualitatively through four steps: coding, i.e., linking evidence to the concepts that appear in the report; sorting, i.e., arranging the coded data into homogenous categories under files in the computer. The next step is data analysis, i.e., local integration (integrating the data into relevant chapters) and inclusive integration (maintaining all chapters' coherence and cohesion).⁹⁴ Finally, data was analyzed once it was acquired, and the writing took place simultaneously. Following these four steps, I reflected on reviewing and considering this research; considering what the findings mean, assessing the conceptual framework, seeking disconfirming evidence, seeking alternative explanations, and comparing findings with the literature.⁹⁵

Book Outline

This book consists of three parts and eight chapters. Part 1 comprises [Chapter 2](#), focusing on the study's context, i.e., the history of Islamic legal authority in Indonesia. It explains how Islamic legal authority has been contested and negotiated in contemporary Indonesia, using the history of family law reform as an illustrative example. Part 2 comprises [Chapters 3 and 4](#), focusing on the concept of corporate zakat in Indonesia, both in Islamic and Indonesian law. [Chapter 3](#) discusses the interpretation of corporate zakat as a duty in Islam carried out by ulama and the Council of Indonesian Ulama (MUI) to determine what constitutes Islamic law in Indonesia. [Chapter 4](#) discusses the legislative and regulatory process of imposing corporate zakat in Indonesian law and the state politics of *sharī'a* implementation in Indonesia. Part 3 comprises [Chapters 5, 6, and 7](#), analyzing the implementation of corporate zakat in Indonesia and whether the provisions concerning corporate zakat obligations are legitimate by the corporations that are the new regulation targets. These chapters focus on case studies of compliance with corporate zakat in Islamic commercial banks in Indonesia.

Three aspects are scrutinized, i.e., decisions to pay zakat, channeling corporate zakat funds, and mixing/separating the funds in doing CSR. Finally, [Chapter 8](#) concludes all three parts into a reflective conclusion that shows how Islamic authority in Indonesia has evolved and what this evolution means to Islamic law and society in Indonesia.

Notes

- 1 See Th.W. Juynboll, “Fard” in *Encyclopaedia of Islam, Second Edition*, eds. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs (Brill, 2010. Brill Online. University of Washington – Libraries), http://www.brillonline.nl.offcampus.lib.washington.edu/subscriber/entry?entry=islam_SIM-2277.
- 2 It is not easy to translate the word *sharīʿa* because there is no exact match for this term in any language. It means a pathway, usually toward a water spring, which signifies purity and cleansing. Muslims understand *sharīʿa* as a set of rules and recommendations upon which the safety of human life depends. Hence, *sharīʿa* covers almost all aspects of Islamic teachings. To write this book, I will only take the meaning of *sharīʿa* from the theological and juridical realms, i.e., God divinely revealed law or Islamic law. *Sharīʿa* as Islamic law differs from other terms that are also identified with it, namely, *fiqh* (Islamic jurisprudence) and the products of *siyāsa sharʿiyya* (statecraft or governance under *sharīʿa*), namely, *qanūn* or Islamic “state” law. A fundamental difference can be found between *sharīʿa* and other Islamic legal terms, especially *fiqh*, referring to Coulson. First, *sharīʿa* comes from God through Qurʾānic verses that do not require further clarification while *fiqh*, which means understanding, is human interpretations of the verses of the Qurʾān that contain various meanings. Second, because *sharīʿa* is revealed, it is only one form, whereas *fiqh* varies according to human reasoning differences. Third, *sharīʿa* must be implemented, while *fiqh* can be chosen from various options according to one’s situation. Finally, *sharīʿa* does not change and applies to all times and places, while *fiqh* changes according to local conditions. See Norman Calder and M.B. Hooker, “*Sharīʿa*” in *Encyclopaedia of Islam, Second Edition*, eds. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs (Brill, 2010. Brill Online. University of Washington – Libraries); Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago and London: The University of Chicago Press, 1969); Arskal Salim, *Challenging the Secular State: the Islamization of Law in Modern Indonesia* (Honolulu: University of Hawaiʻi Press, 2008), 11–12. Explanations related to Islamic “state” law are in the discussion of *siyāsa sharʿiyya* in Chapter 1. In writing this book, the three terms of Islamic law (*sharīʿa*, *fiqh*, and Islamic “state” law [legislation and regulation]) are used appropriately according to their character.
- 3 See Volker Nienhaus, “Zakat, Taxes, and Public Finance in Islam” in *Islam and the Everyday World: Public Policy Dilemmas*, eds. Sohrab Behdad and Farhad Nomani (London and New York: Routledge, 2006), 165–192; Monzer Kahf, “Taxation Policy in an Islamic Economy” in *Fiscal Policy and Resource Allocation in Islam*, ed. Ziauddin Ahmed (Jeddah: International Center for Research in Islamic Economics, King Abdul Aziz University), 130–153.
- 4 The 1990 census recorded 156.3 million Muslims in Indonesia, 87.2% of the population, and the largest Muslim population globally. This was a steady percentage, having been 87.1% in 1980. The 2010 census recorded 207.18 (87.18%). See M.C. Ricklefs, *A History of Modern Indonesia since c. 1200* (Stanford,

- CA: Stanford University Press, 2008), 379; “Penduduk Menurut Wilayah dan Agama yang Dianut,” *Sensus Penduduk 2010*, <http://sp2010.bps.go.id/index.php/site/tabel?tid=321&wid=0> (accessed April 11, 2015).
- 5 See Arskal Salim, “Epilogue. Shari’a in Indonesia’s current transition: An Update” in *Shari’a and Politics in Modern Indonesia*, eds. Arskal Salim and Azyumardi Azra (Singapore: ISEAS, 2003), 229.
 - 6 This is because the law’s objective is to increase Muslims’ awareness to perform this religious obligation and maximize the potency of zakat in achieving social welfare and social justice in Indonesia by unifying, centralizing, and coordinating numerous public and private zakat institutions. See the *Elucidation of Law No. 38/1999 on Zakat Management*; Salim, *Challenging the Secular State*, 128.
 - 7 Majelis Ulama Indonesia, *Keputusan Ijtima’ Ulama Komisi Fatwa Se Indonesia III Tahun 2009* (Jakarta: Majelis Ulama Indonesia, 2009), 50–56.
 - 8 See Donald L. Horowitz, “The Qur’an and the Common Law: Islamic Law Reform and the Theory of Legal Change,” *The American Journal of Comparative Law*, vol. 42 (1994); Indonesia Magnificence of Zakat and Pusat Ekonomi dan Busines Syariah FE-UI, *Indonesia Zakat and Development Report 2010* (Jakarta: Indonesia Magnificence of Zakat, 2010), 69; Russell Powell, “Zakat: Drawing Insight for Legal Theory and Economic Policy for Islamic Jurisprudence,” *University of Pittsburgh Tax Review* 7 (2009–2010): 67.
 - 9 See, e.g., Ibn Rushd and al-Jaziri who wrote *fiqh* on four schools of Islamic law (*madhhab*): Mālikiyya, Ḥanafīyya, Shāfi’īyya and Ḥanābila. According to them, the aforementioned requirements were agreed by all four *madhhab*. Ibn Rushd al-Qurtubi, *Bidayat al-Mujtahid wa Nihaya al-Muqtasid* (Beirut: Dar Ibn Hazm, 1995), II: 482; Abdurrahman al-Jaziri, *Kitab al-Fiqh ‘ala al-Madhahib al-Arba’ah*, (Beirut: Dar Ihya at-Turath al-‘Arabi, n.d.), I: 590–591.
 - 10 See, e.g., Yusuf al-Qaradawi, *Fiqh az-Zakah: Dirasah Muqarinah li Ahkamiha wa Falsafatiha fi Daw’i al-Qur’an wa as-Sunnah* (no publication place: Mu’assasah ar-Risalah, 1977), I: 528–529.
 - 11 See Table 5. *Corporate Zakat Payment in Zakat Agencies 2000–2010*, Chapter 5.
 - 12 Anthony H. Johns, “Indonesia: Islam and Cultural Pluralism,” in *Islam in Asia: Religion, Politics, and Society*, ed. John L. Esposito (Oxford: Oxford University Pressm 1987) 210; Alifitri, “Religious Liberty in Indonesia and the Rights of “Deviant” Sects,” *Asian Journal of Comparative Law* 13, no. 1 (2008): 5.
 - 13 The latest abortive effort was during the constitutional reform period from 1999 to 2002, when the United Development Party (PPP) and the Crescent Moon and Star Party (PBB) proposed to amend article 29 by reinserting the “seven words” of the Jakarta Charter. Muhammadiyah and Nahdlatul Ulama, which had pushed for an Islamic state in 1955 through the Masyumi party, now see the formal incorporation of *shari’a* into the Constitution as unnecessary. This stance was reflected in the legislature by two parties connected with both organizations – the National Mandate Party (PAN) and the National Awakening Party (PKB) – both of which rejected the proposal to include *shari’a* in article 29. See Nadirsyah Hosen, “Religion and the Indonesian Constitution: A Recent Debate,” *Journal of Southeast Asian Studies* 36, no. 3 (2005): 419, 419–420, 425–427.
 - 14 Deliar Noer, *Administration of Islam in Indonesia* (Cornell Modern Indonesia Project, Southeast Asia Program, Cornell University 1978), 8.
 - 15 M.B. Hooker, “Introduction: Islamic Law in South-east Asia,” *Studia Islamika* 10, no. 1 (2003): 213, 219.
 - 16 See Mark Cammack, Lawrence A. Young, and Tim Heaton, “Legislating Social Change in an Islamic Society – Indonesia’s Marriage Law,” *American Journal of Comparative Law* 44 (1996): 61–62; Mark E. Cammack, Helen

- Donovan, and Tim B. Heaton, "Islamic Divorce Law and Practice in Indonesia," in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, eds. R. Michael Feener and Mark E. Cammack (Cambridge, MA: Islamic Legal Studies Program, Harvard Law School, 2007), 99–100.
- 17 Muhammad Taufik Ridlo, *Zakat Profesi dan Perusahaan* (Jakarta: Institut Manajemen Zakat, 2007); Noor Aflah, *Arsitektur Zakat Indonesia Dilengkapi Kode Etik Amil Zakat Indonesia* (Jakarta: UI-Press, 2009).
 - 18 Muhammad Akhyar Adnan and Nur Barizah Abu Bakar, "Accounting Treatment for Corporate Zakat: A Critical Review," *International Journal of Islamic and Middle Eastern Finance and Management* 2, no. 1 (2009); Eric Nurcahyo Atmahadi, "Analisis Perlakuan Akuntansi Zakat pada Bank Syariah di Indonesia," Unpublished Undergraduate Final Paper, Faculty of Economics, Universitas Indonesia, 2013.
 - 19 Adnan and Bakar, "Accounting," 40.
 - 20 Adnan and Bakar, "Accounting," 34.
 - 21 Atmahadi, "Analisis," 66–75.
 - 22 Jan Michiel Otto, ed., *Shari'a Incorporated: A Comparative Overview of the Legal System of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 19–20, 33.
 - 23 Otto, *Shari'a Incorporated*, 617, 629.
 - 24 Moch. Nur Ichwan, "Ulama, State and Politics: Majelis Ulama Indonesia after Soeharto," *Islamic Law and Society* 12, no. 1 (2005): 57.
 - 25 Mohamad Abdun Nasir and Asnawi, "The Majelis Ulama's Fatwa on Abortion in Contemporary Indonesia," *The Muslim World* 101 (2011).
 - 26 Piers Gillespie, "Current Issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama Fatwa No. 7 Opposing Pluralism, Liberalism, and Secularism," *Journal of Islamic Studies* 18, no. 2 (2007).
 - 27 Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975–1998)," *Journal of Islamic Studies* 15, no. 2 (2004); Syafiq Hasyim, "The Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and Religious Freedom," *Irasec's Discussion Paper #12* (2011).
 - 28 Nadirsyah Hosen, "Fatwa and Politics in Indonesia" in *Shari'a and Politics in Modern Indonesia*, ed. Arskal Salim and Azyumardi Azra (Singapore: ISEAS, 2003), 168–180.
 - 29 Mun'im Sirry, "Fatwas and Their Controversy: The Case of the Council of Indonesian Ulama (MUI)," *Journal of Southeast Asian Studies* 44, no. 1 (2013): 100–117.
 - 30 John Olle, "The Majelis Ulama Indonesia versus 'heresy': The Resurgence of Authoritarian Islam" in *State of Authority: The State in Society in Indonesia*, ed. Gerry van Klinken and Joshua Barker (Ithaca: Cornell Southeast Asia Program, 2009), 95–116.
 - 31 Tim Lindsey, "Monopolising Islam: The Indonesian Ulama Council and State Regulation of the 'Islamic economy'", *Bulletin of Indonesian Economic Studies* 48, no. 2 (2012).
 - 32 Lindsey, "Monopolising Islam."
 - 33 Arskal Salim and Azyumardi Azra, "Introduction: The State and Shari'a in the Perspective of Indonesian Legal Politics" in *Shari'a and Politics in Modern Indonesia*, ed. Arskal Salim and Azyumardi Azra (Singapore: ISEAS, 2003), 13.
 - 34 Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Pacific Rim Law and Policy Journal* 19, no. 2 (2010): 285; Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford and Portland: Hart Publishing, 2012), 248.
 - 35 I will discuss this reception theory more and how it is used to theoretically explain the current legal policy of the state implementation of Islamic law in Indonesia in Chapter 4.

- 36 Salim, "Challenging," 4.
- 37 See, e.g., Umar A. Oseni et al., "The legal Implications of 'Fatwa Shopping' in the Islamic Finance Industry: Problems, Perceptions, and Prospects," *Arab Law Quarterly* 30 (2016): 107–137; Walid Mansour et al., "How Ethical is Islamic Banking in the Light of the Objectives of Islamic Law," *Journal of Religious Ethics* 43, no. 1 (2015): 51–77; Mehmet Asutay, "The Socio-Ethical Failure in Islamic Banking and Finance," *New Horizon* 182 (2012): 33–35; Habib Ahmed, "Maqasid al-Shari'ah and Islamic Financial Products: A Framework for Assessment," *ISRA International Journal of Islamic Finance* 3, no. 1 (2011): 149–160.
- 38 Mansour et al., "How Ethical"; Asutay, "The Socio-Ethical"; Ahmed, "Maqasid al-Shari'ah."
- 39 Oseni et al., "The legal Implications."
- 40 Shakir Ullah et al., "Fatwa Repositioning: The Hidden Struggle for Shari'a Compliance Within Islamic Financial Institutions," *Journal of Business Ethics* (First online 17 Februari 2016), 1–23.
- 41 Al-Qaradawi, *Fiqh al-Zakah*, 37–38.
- 42 Al-Qaradawi, *Fiqh al-Zakah*, 37; Jonathan Benthall, "Financial Worship: The Quranic Injunction to Almsgiving," *Journal of the Royal Anthropological Institute* 5 (1999): 29.
- 43 Kenneth Cragg, *The Call of the Minaret* (New York: Oxford University Press, 1956), 154.
- 44 Cragg, *The Call*, 154; Benthall, "Financial," 35.
- 45 Muhammad Nejatullah Siddiqi, "The Role of the Voluntary Sector in Islam: A Conceptual Framework" in *Islam and the Economic Development of South-east Asia: The Islamic Voluntary Sector in Southeast Asia*, ed. Mohammad Ariff (Singapore: Institute of Southeast Asian Studies, 1991), 17–18.
- 46 See Alfitri, "The Law of Zakat Management and Non-Governmental Zakat Collectors in Indonesia," *International Journal of Not-for-Profit Law* 8, no. 2 (January 2006): 56.
- 47 See Al-Qaradawi, *Fiqh al-Zakah*, 917, 924, 930, 932; Monzer Kahf, "Zakah," *Kahf.net: Papers*, <http://monzer.kahf.com/paper/english/zakah.pdf> (accessed April 27, 2010), 3–4; Alfitri, "The Law," 56. For more details on items subject to zakat, their *nisab* (threshold) and rates see Al-Qaradawi, *Fiqh al-Zakah*, 121–533.
- 48 See, e.g., Al-Qaradawi, *Fiqh al-Zakah*, 121–533; Abdullah Ibn Muhammad al-Tayyar, *al-Zakah wa Tatbiqatuha al-Mu'asirah*, 2nd ed. (Riyadh: Maktabat al-Tawbah, 1993), 70–71.
- 49 See Al-Qaradawi, *Fiqh al-Zakah*, 121–533; Al-Thayyar, *az-Zakah*, 77–101; Monzer Kahf, "The Principle of Socio-Economic Justice in the Contemporary Fiqh of Zakah," *Kahf.net: Papers*, http://monzer.kahf.com/papers/english/socioeconomic_justice.pdf (accessed July 23, 2011), 17–18.
- 50 Qur'ān, chapter IX: 60; Benthall, "Financial," 30–31.
- 51 See Al-Qaradawi, *Fiqh al-Zakah*, 69.
- 52 See, e.g., Al-Thayyar, *az-Zakah*, 97.
- 53 See Susan E. Rayner, *The Theory of Contracts in Islamic Law: A Comparative Analysis with Particular Reference to the Modern Legislation in Kuwait, Bahrain and the United Arab Emirates*, 1st ed. (London; Boston: Graham & Trotman, 1991), 7.
- 54 See Al-Qaradawi, *Fiqh al-Zakah*, 157–159, 171, 222–232, 282–311, 426–431.
- 55 Kahf, "Zakah," 3.
- 56 Kahf, "The Principle," 28.
- 57 Maulana Wahiduddin Khan, "The Concept of Charity in Islam," *International Journal of Civil Society Law* 2 (2004): 95.
- 58 See Benthall, "Financial," 31.

- 59 Wael B. Hallaq, *Sharia: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 231.
- 60 *Qawā'id al-fiqhiyya* generally means the principles of Islamic law. These principles are general rules of Islamic jurisprudence (*fiqh*) that describe the goals and objectives of *sharī'a*. They are applied in various cases that fall into the common rulings and play a crucial role in deducing many *fiqh* rules because they provide guidelines for producing particular defining law of human's actions (*al-hukm al-taklīfī*, viz., the obligatory, recommended, forbidden, abominable, permissible) or declaratory law (*al-hukm al-wad'ī*, viz., cause, condition, hindrance, strict law, and concessionary law, valid, irregular, and void); see M.H. Kamali, *Shariah Law, An Introduction* (Oxford: Oneworld, 2012); M.H. Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Text Society, 2003), 410–440.
- 61 See the discussion of the legal maxims, e.g., in Alfitri (2007–2008), “Expanding a Formal Role for Islamic Law in the Indonesian Legal System: The Case of Mu'amalat,” *Journal of Law and Religion* 23 (2007–2008): 257.
- 62 Wael B. Hallaq, “Juristic Authority vs. State Power: The Legal Crises of Modern Islam,” *Journal of Law and Religion* 19 (2003–2004): 245.
- 63 Hallaq seems to neglect the fact that few provisions in the Qur'ān that contain “instant” legal significance because the text has a univocal language. Jurists have placed rulings derived directly from such text of the Qur'ān at the highest level because it is confident concerning authenticity (all texts of the Qur'ān are indubitably regarded authentic) and meaning. See Clark Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a into Egyptian Constitutional Law* (Leiden; Boston: Brill, 2006), 24–25.
- 64 Hallaq, “Juristic,” 245.
- 65 Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 1–23.
- 66 The emergence and development of the *madhhab* (“school of law”; pl. *madhāhib*) started after the early formative period of Islamic law (around 8th AD), during which jurists would associate their legal theory based on region. This reference to the region was due to Medina's centrality as a center of reference for legal thought. This would affect the distribution of information. As a result, a region in which peculiar use of reasoning emerged instead of the Prophet's tradition due to the limited number of the Prophet's tradition recognized by jurists living far from Medina. Three distinguished guilds produced influential Islamic legal doctrines during this period, i.e., Kufa, Medina, and Syria. Later on, however, during the eighth–ninth AD, the *madhhab* was developed around individual leading jurists rather than regions. It was the period when the *madhāhib* flourished into hundreds in number. The subsequent development in ninth–tenth AD saw these personal *madhāhib* crystallized into four schools of Islamic law (if we consider only Sunnī legal tradition). This resulted from a widespread recognition of their legitimacy acquired through their followers' work, who preserved, defended, and developed their master's doctrine. See, e.g., George Makdisi, “The Significance of the Sunni School of Law in Islamic Religious History,” *International Journal of Middle East Studies* 10 (1979): 2–9; Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 28–33, 58–59.
- 67 Hallaq, *Authority*, 1–23; on the appreciation of *taqlīd* and its importance for achieving legal uniformity within a *madhhab* by regulating actions of juriconsults and *qādi* who sat at the bottom of legal hierarchy, see Mohammad Fadel, “The Social Logic of Taqlid and the Rise of the Mukhtasar,” *Islamic Law and Society* 3, no. 2 (1996): 193–233.

- 68 David S. Powers writes on four examples of how *qādi* sought *fatāwā* from jurisconsults because they were confused by the facts of cases (given various claims provided by litigants) and unsure of how to proceed in “Four Cases Relating to Women and Divorce in Al-Andalus and the Maghrib, 1100-1500,” in *Dispensing Justice in Islam: Qadis and Their Judgements*, Muhammad Khalid Masud, Rudolph Peters and David S. Powers (eds.) (Leiden; Boston: Brill, 2006), 383–409; Hallaq, “Juristic,” 248.
- 69 Hallaq, *Authority*, 136–235.
- 70 See about the role of *mukhtāsar* in limiting the legal indeterminacy in Islamic law by formalizing the legal doctrines in a particular *madhhab* in Fadel, “The Social”, 215–219.
- 71 Hallaq, *Authority*, 136–235.
- 72 Hallaq, “Juristic,” 248.
- 73 The state seemed to be concerned with its authority to regulate an area of law which is considered as “partaking most closely of the very warp and woof” of Islam, given its detailed provisions in Qurʾān and meticulous doctrines in the jurists’ work; see Norman Anderson, *Law Reform in the Muslim World* (London: Athlone Press, 1976), 17, 38; see also Abdullahi A. An-Naʿim, *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Books, 2002), 9.
- 74 Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 209–254.
- 75 For example, using criminal legislative methods, an act permissible according to *sharʿa* will be sanctioned by the reformist provision to deter potential violators. See Aharon Layish, “The Transformation of the *Sharia* from Jurists Law to Statutory Law in the Contemporary Muslim World.” *Die Welt des Islams* 44, no. 1 (2004): 92.
- 76 Norman Anderson extensively explained the modernist law reform methods and classified them into five expedients. They are (1) the procedural expedient: “the right of the Ruler to define and confine the jurisdiction of his courts” (*takhṣiṣ al-qaḍāʾ*), for example, restriction on the *sharʿa* courts to questions of only Islamic personal law and gifts and *waqf*; (2) the eclectic expedient (*takhayyur*); (3) the expedient of re-interpretation, i.e., maintaining the right of independent *ijtihād* by direct encounter with the Qurʾān and Ḥadīth and bypassing *ijmāʿ*; (4) the expedient of administrative orders, i.e., a legislative enactment which find its justification, not in the *sharʿa* provision per se instead in the condition that it is regarded as beneficial and ‘not contrary to the *sharʿa*’; and (5) the expedient of reform by judicial decisions, especially in Muslim countries formerly under British rule; see Anderson, *Law Reform*, 42–85. See, e.g., Hallaq, *A History*, 214; Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1978), 203–207, 221.
- 77 Clark B. Lombardi and R. Michael Feener, “Why Study Islamic Legal Professionals?” *Pacific Rim Law & Policy Journal* 21, no. 1 (2012): 9.
- 78 See C.E. Bosworth, “Siyāsa: (1) In the sense of statecraft, the management of affairs of state and, eventually, that of politics and political policy” in C.E. Bosworth, I.R. Netton, F.E. Vogel, “Siyāsa” in *Encyclopaedia of Islam, Second Edition*, ed. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs (Brill, 2011. Brill Online. University of Washington – Libraries), http://www.brillonline.nl/subscriber/entry?entry=islam_COM-1096; Frank E. Vogel, “Siyāsa (3) In the sense of *siyāsa sharʿiyya*” in C.E. Bosworth, I.R. Netton, F.E. Vogel, “Siyāsa” in *Encyclopaedia of Islam, Second Edition*, ed. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs (Brill, 2011. Brill Online. University of Washington – Libraries), http://www.brillonline.nl/subscriber/entry?entry=islam_COM-1096; Lombardi, *State*, 49.

- 79 Lombardi, *State*, 49.
- 80 As quoted by Lombardi, *State*, 52–53.
- 81 Vogel, “Siyasa.”
- 82 See this new understanding toward the concept of *taqlīd* in Fadel, “The Social Logic,” 193–233.
- 83 See Lombardi, *State*, 52.
- 84 Cf. Lombardi, *State*, 52–53.
- 85 See Al-Shatibi, *al-Muwafaqat fi Usul al-Shari’ah* (Beirut: Dar al-Kutub al-Ilmiyyah, t. t.), II: 6.
- 86 See Al-Ghazali, *al-Mustasfa* (Cairo: al-Maktabah at-Tijariyyah al-Kubra, 1937), I: 139–140.
- 87 Al-Ghazali, *al-Mustasfa*, 139–140.
- 88 Al-Ghazali, *al-Mustasfa*, 53.
- 89 See Nadirsyah Hosen, “Hilal and Halal: How to Manage Islamic Pluralism in Indonesia,” *Asian Journal of Comparative Law* 7, no. 1 (2012): 4.
- 90 See, e.g., Otto, *Sharia Incorporated*, 617, 629.
- 91 Robert K. Yin, *Case Study Research: Design and Method*, 3rd ed. (Thousand Oaks; London; New Delhi: SAGE Publication, 2002), 3–5.
- 92 Yin, *Case Study*, 13.
- 93 A good case study needs to rely on multiple evidence sources because data needed to explain an event carefully are never independent. These data later are needed to be converged using triangulation. Yin, *Case Study*, 14.
- 94 See Robert S. Weiss, *Learning from Strangers: The Art and Method of Qualitative Interview Studies* (New York: The Free Press, 1994), 154–162; see also Bruce L. Berg, *Qualitative Research Methods for the Social Sciences*, 7th ed. (Boston: Allyn & Bacon, 2009), 321.
- 95 Berg, *Qualitative Research*, 321.

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Part I

Context



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2 AUTHORITY AND LEGITIMACY IN QUESTIONS: AN ILLUSTRATIVE EXAMPLE

This chapter addresses the issues regarding the authority of Islamic law and the legitimacy of its interpretations in Indonesia. It examines the history of the evolution of Islamic authority in the country and provides an account of how it is contested and negotiated in contemporary Indonesia.

This chapter relies on family law reform history as an illustrative example since family law is the only aspect of the Islamic law that the state has regulated since Indonesia's independence. There is a plurality of sources of authority for Islamic law in Indonesia on the domain of family law. The case studies related to family law in this chapter and corporate zakat in the next chapter reveal tensions between continuity and change in the development of Islamic legal principles and the strategies that different actors employ to advance their preferred version of Islamic legal norms.

This chapter focuses on analyzing the promulgation of the National Marriage Law No. 1/1974, the drafting of the Islamic marriage code (the 1991 Compilation of Islamic Law of Indonesia and its 2004 Counter Legal Draft), and three Constitutional Court Cases (*M. Insa v. the State* concerning the validity of polygamous marriage restrictions; *Halimah v. the State* concerning the validity of irreconcilable difference as the ground for a *ṭalāq* (divorce); and *Machica v. the State* concerning the legal status of a child born outside wedlock).

Islamic Law in the Era of Codification: Sources and Actors

Although Indonesia is the world's most populous Muslim country,¹ Islam has not been adopted as the state ideology. Similarly, the Indonesian Constitution does not make any reference to *sharī'a* or Islamic principles.² In the event of questions on which Islamic laws or Muslim jurists' opinions should be followed, there is no "blue book" or ready guide that provides resolutions within Indonesia's Islamic law framework. The state holds the authority to enact law through the legislature and other mandated organs such as the President, the Ministries, and the Supreme Court. When it comes to Islamic legislation or codification, these state organs utilize Islamic juristic expertise for drafting and deliberating, intending to maintain legislative

consistency with the *sharīʿa*.³ Despite this, such state “Islamic” laws are still challenged by other Muslim jurists and Muslims in Indonesia regarding their authority and the legitimacy of new interpretations of particular subjects or regulatory issues.

This problem occurs in the Muslim world because Muslims still use the traditional Islamic law theory to determine the legitimacy of the state’s codification of Islamic law. When a theory of Islamic law sources falls behind a legal system’s developmental needs, actual legal developments become hard to reconcile with the theory.⁴ In the traditional theory of sources of Islamic law, known as *uṣūl al-fiqh*, there are four sources of *sharīʿa*, namely, the Qurʾān, Ḥadīth (the Prophetic tradition), *ijmāʿ* (consensus), and *qiyās* (reasoning by analogy). Given their characteristics as religious texts, the Qurʾān and Ḥadīth are called the material sources of *sharīʿa*. Meanwhile, *qiyās* or *ijtihād* is considered a reasoning technique that may elaborate and interpret these religious texts. As for *ijmāʿ*, jurists have used it as a principle for reconciling competing legal opinions to reach a consensus.⁵ On the other hand, a modern legal system uses the concept of primary sources that one consults to find the actual texts of laws and secondary sources that one uses to clarify the rules stated in the primary sources.⁶

Based on the hierarchical ranking of legal sources, this secular legal system of law sources is then applied by Muslims to know what Islamic law is and its origin. As such, *fiqh*, which is a juristic elaboration of the meaning of the Qurʾān and Ḥadīth, is primarily treated as the primary source in Islamic law.⁷ This is so especially after the four schools of Islamic law, which were set up around the 10th century, had developed their specific rules and were considered normative. To help clarify rules set forth by *fiqh*, jurists following the four Islamic schools of law refer to their own guild’s legal handbook, *fatwā* collections, commentaries, and super-commentaries. These are today treated as the secondary sources of Islamic law.

Meanwhile, the Qurʾān and Ḥadīth are relegated to the status of remote sources of law, because jurists no longer derive the rules of *sharīʿa* directly from them.⁸ After establishing the four schools of Islamic law, there was a prevailing perception among Muslims that the four eponyms had discussed every aspect of the *sharīʿa*. As a result, later jurists could no longer deduce the rules of the *sharīʿa* directly from the Qurʾān and Ḥadīth because their epistemological level of the *sharīʿa* was deemed insufficient to be considered as that of an independent *mujtahid* (*mujtahid mustaqīl*),⁹ that is, equivalent to that of the four eponyms. This situation was known as the closing of the gates of *ijtihād* (*insidād al-bāb al-ijtihād*). Some Muslims still perceive this to be true.¹⁰ As a consequence, the supremacy of *fiqh* was reinforced, and exercising *ijtihād* – abandoning *fiqh* by directly interpreting the Qurʾān and the Ḥadīth especially without employing traditional methodology – was rejected.

In the contemporary era, however, some groups of Muslims question the authority of classical jurists as the sole interpreters of the sources

of *sharī'a*. They tend to demote classical *fiqh* to the rank of secondary sources and deny it any legal binding force upon Muslims trying to solve contemporary legal problems. Other Muslim groups entirely reject the authority of *fiqh* and treat the Qur'ān and Ḥadīth as the primary sources of Islamic law. There are also a growing number of people who question the authenticity of the collected Ḥadīth. They then treat the Qur'ān as the sole primary source of *sharī'a* and classify Ḥadīth and *fiqh* as secondary sources.¹¹

In the context of Indonesia, I argue that scholars of *sharī'a* make up the group that mainly campaigns for the reconsideration of the authoritative status of classical *fiqh* and the methods of interpretation of the Qur'ān and Ḥadīth laid down by the classical jurists. Scholars are one of the four agents of legal change in the Islamic legal tradition besides the *qāḍī* (judges), the *muftī* (jurisconsults), and the *muṣannif* (author-jurists). In his study on these four legal professions' roles from the formative period to the premodern period (7th–18th centuries), Hallaq found that the jurisconsults and the author-jurists adapted Islamic law to meet the demand new circumstances. The scholars (and the *qāḍī*) were not involved in legal change because this was not part of their teaching law students' roles and writing condensed works for their students' benefit. When they articulated a legal reaction to social changes, they did not carry out this task in their capacity as a professor *qua* professor but more as an author-jurist or jurisconsult.¹² We also know from Hallaq's study that the roles of these four legal professions rarely stood independently of each other because a Muslim jurist might become a *qāḍī* and at the same time also a jurisconsult, an author-jurist, and a professor of *sharī'a*. After the 8th century, a Muslim jurist's career was determined by his success at fulfilling all these roles. The ability to reach the author-jurist level, followed by jurisconsult, was deemed the highest achievement; meanwhile, being a *qāḍī* was not a prerequisite for crowning success.¹³

To some extent, Hallaq's finding on the Islamic legal professions' overlapping roles is relevant to Indonesia's contemporary context. A professor of *sharī'a* in Indonesia may also be a judge, a jurisconsult, and an author-jurist (see cases below for further explanation). In the codification of Islamic family law, however, *sharī'a* professors in Indonesia have engaged more actively than the jurisconsults or author-jurists in articulating legal changes to meet such social demands as equal rights for women and protection for minors. As noted earlier, family law was the only aspect of Islamic law that remained governed by *fiqh* in Muslim countries until the premodern period. When the state started Islamic legal reforms in the 1980s, Islamic family law was the first law that underwent modernization to meet current legal system agendas such as legal certainty and human rights protection.¹⁴

In Indonesia's experience, professors of *sharī'a* either proposed the legal draft of Islamic family law to the government or were appointed by the government to formulate it. They were able to develop the formula that met the

state's political agenda because they did not bind themselves to follow the traditional method of *ijtihād* in the same way as their counterparts, the jurisconsults, or author-jurists did. Like Norman Anderson's finding on modernists' methods in some other Muslim countries, professors of *sharī'a* in Indonesia also utilized public utility and eclecticism to formulate these legal drafts. They also assert rights to perform *ijtihād* on matters stipulated in the Qur'ān or matters decided by the eponyms of *madhāhib*.¹⁵

The author-jurists and jurisconsults in Indonesia are not necessarily absent from articulating legal changes. Studies on Islamic legal thought in Indonesia show that Muslim jurists have played an essential role in translating the Islamic legal tradition, which is heavily influenced by Middle Eastern culture and traditions, into Indonesia's context. Having examined the spirit of *ijtihād*, which accompanied modernization in Indonesia and identified Muslim jurists' specific contribution from Moenawar Chalil and A. Hassan in the 1900s to Masdar F. Mas'udi and Husein Muhammad in the 2000s, Feener argues that Indonesian conversations on Islamic legal thought are pretty dynamic. These jurists could reconceptualize the approach to religious texts and classical legal traditions regarding Indonesian society's specific conditions and its Muslim population's needs.¹⁶ However, when it comes to adapting Islamic family law to the state's agenda of unification and legal certainty or the requirements of human rights upheld by the state, many jurisconsults have rejected the legal reform proposals and utilized classical *fiqh* parameters determining the *sharī'a*-compliance of such proposals. They usually affiliate themselves with the issuing of *fatwā* from organizations such as the Council of Indonesian Ulama (MUI) or orthodox Islamic organizations such as Muhammadiyah, Nahdlatul Ulama (NU), Hizbut Tahrir, and the like. This fact does not negate the dissenting opinions voiced by individual jurists within these organizations. As shown in the cases below, MUI and Islamic organizations do not support the government's proposals to radically change Islamic family law, such as banning polygamy or criminalizing unregistered marriages. In response, they usually issue *fatwā* or arguments in the mass media to show the Indonesian public what "true" Islamic law says about these issues and pressure the government to revoke or withdraw its proposals. We will explore how the authority and legitimacy of the Islamic legislation in Indonesia are contested and negotiated in the case studies below.

The Case of Indonesia's Marriage Law No. 1 of 1974

Drafting and Amending the Law

When President Suharto proposed a national marriage law draft without consulting the Department of Religion in 1973,¹⁷ the proposal was vehemently opposed by Muslim representatives in the legislature (the United Development Party) and angry protesters outside the House.¹⁸ The

proposal was deemed to attack the Islamic doctrine on marriage directly because several clauses in the proposal contradicted it and, thus, would invalidate a marriage or divorce performed according to Islamic law. For example, according to the bill, a valid marriage would exist: when the statutory requirements were fulfilled (*inter alia*, the parties consent and the age of majority), conducted in front of an official registrar, and then recorded by the official registrar. The opponents of the proposal maintained that, following the Shāfiʿī School of Islamic law, which is widely recognized in Indonesia, a marriage is valid when the offer (*ijāb*) of the bride's guardian and the acceptance (*qabūl*) of the groom are complete. Moreover, two qualified witnesses are present during the marriage solemnization.¹⁹ Other clauses in the proposal that incited public outrage were as follows: first, the requirement of an application for intent for polygamous marriage and the transfer of divorce petitions to a civil court instead of a religious court; second, the principle that religious differences did not impede marriage; third, that adopted children have the same status as biological children; fourth, that the legal status of an engagement was recognized and, thus, pregnancy resulting from an engagement would give the child the same legal status as a child born in wedlock.²⁰

The bill underwent redrafting by a working committee of ten members consisting of representatives of parties in the legislature in response to the controversies. The bill was finally enacted as Law No. 1 of 1974 on Marriage after the working committee accommodated the United Development Party's demands, representing Muslim voices in the legislature. The result was that the Islamic religious law on marriage and religious courts' role would not be decreased or changed. All provisions contrary to Islamic doctrine were removed from the bill. Marriage registration was no longer required to validate marriage requirements, and consequently, a marriage conducted according to the religious law applicable to the parties would be sufficient. (If Muslims wanted their marriage to be legal according to state law, they needed to perform it before the official registrar and then register it.) On the other hand, the United Development Party had to accept the provisions intended to prevent arbitrary divorces and polygamy put forward by the government as a part of the legislative consensus. Thus, Muslims must get permission from the Religious Court before performing a polygamous marriage, and the religious courts would not grant an application for a no-fault divorce.²¹

The promulgation of Marriage Law No. 1 of 1974 was intended to elevate women and minors' status. Through the Law, the government tried to limit arbitrary *ṭalāq* divorce and polygamy by men and eliminate child marriage.²² However, studies found that the government's efforts to push its modernization agenda through the Marriage Law have only partially succeeded.²³ Despite sanctions for the offenders, the Law cannot wholly deter practices such as unregistered marriage, minor age marriage, divorces pronounced outside the religious courts, and polygamy conducted without

the religious courts' permission. One of the factors cited by these studies is the strong influence of Islamic religious law on marriage. In this regard, the uncoded Islamic marriage law (Shāfi'ī *fiqh*) is deemed sufficient by Indonesian Muslims for contracting their marriages. This belief is shaped, among other things, by Indonesian ulama's (both jurists and non-jurists) continuous endorsement of *fiqh*'s superiority regarding marriage in comparison with codified legislation.²⁴

The superiority of *fiqh* over legislation, and the assertion of Muslim jurists' authority as the de facto interpreters of Islamic law, can also be seen in the recent effort to pass the Muslim Marriage Law in 2010. The bill was drafted by the Supreme Court and the Ministry of Religious Affairs with ulama's involvement, judges of the religious courts, and women's rights groups. However, given controversies created by the bill, the legislature has not approved the bill to date. The bill was vehemently opposed by Muslims, including the leaders of the two largest Islamic organizations (Muhammadiyah and NU) and MUI because it contains a provision that will criminalize the practice of unregistered marriage as a felony (note: Law No. 23 of 2006 on Civil Registration already treats unregistered marriage as a regulatory offense, punishable with fines of IDR 1 million).²⁵ Through its chairman Ma'ruf Amin, MUI stated in a national media release that an unregistered marriage is only forbidden (*ḥarām*) when there is a victim of that kind of marriage. He added that MUI had not reviewed it yet, but that it had already issued a *fatwā* in 2006 on the validity of *nikah di bawah tangan* or marriage without the presence of a registrar. Thus, an unregistered marriage, as long as it fulfills the requirements outlined by *fiqh* on marriage, is considered valid.²⁶

Constitutional Court Cases

Earlier, I mentioned that Indonesia does not have a formal guide for resolving the conflict of laws regarding effective Islamic law in Indonesia. However, after establishing the Indonesian Constitutional Court in 2003 during the reformation era of Indonesian democracy, the question of which Islamic law or Islamic juristic opinion is valid has new contention sites that needed to be resolved. Once a bill of rights was introduced as part of the constitutional amendments of 2000, using the framework of freedom of religion, equal treatment, or freedom from any form of discrimination,²⁷ Indonesian Muslims could challenge "Islamic" laws that the legislature has enacted. A structural problem, however, was that the Constitutional Court judges appointed in Indonesia did not have the classical Islamic legal training necessary to carry out the difficult task of arbitrating contentious disputes between conservative Muslims and the state's claims regarding the extent to which Islamic law should be recognized, applied, and enforced by the state's organs. In the following discussion, we explore how the Court approached the authority and legitimacy of Islamic legislation in Indonesia.

Muhammad Insa Versus the State (Polygamous Marriage Restrictions)

This petition is about the constitutionality of polygamous marriage restrictions imposed by Marriage Law No. 1 of 1974. The petitioner is Muhammad Insa, an entrepreneur whose application to the Religious Court for creating a polygamous marriage was rejected in 2007. Interestingly, he had already entered into this polygamous marriage on an unregistered basis in 2001; so, his application was actually for officially registering his 2001 polygamy. However, the Religious Court found that he was unqualified because his first wife refused to consent as required by the 1974 Marriage Law.²⁸ He then claimed that the polygamy restrictions set by Law No. 1 of 1974 concerning Marriage had limited his freedom to worship God, as he believed that polygamy is a type of worship under Islamic doctrine. He further argued that it had also violated his right to create a family and continue his lineage through a valid marriage as per art. 28B(1) of the 1945 Constitution. He then demanded that the Constitutional Court declare that the provision on polygamy in Law No. 1 of 1974 concerning Marriage²⁹ did not comply with the Constitution³⁰ and declared that provision null and void.³¹ To support his claim from an Islamic point of view, he cited the Qurʾān (Chapter al-Nisāʾ verse 3) and Ḥadīth (from the authoritative collection of *Ṣaḥīḥ Muslim*) which set out the permissibility of polygamy in Islam. He also brought in two expert witnesses. One of them was a professor of *sharīʿa* (Ahmad Sudirman of the State Islamic University, Jakarta) who questioned *sharīʿa* basis for the polygamy restrictions set up by state law because the Qurʾān allows it and none of the four schools of Islamic law prohibits it.

This suit failed because the Constitutional Court held, among other things, that monogamy is the marriage principle in Law No. 1 of 1974, but polygamy is permitted as long as it fulfills Islamic doctrines' requirements, such as the ability to be fair. In framing its holding, the Court confirmed the interpretation of Islamic marriage law provided by expert witnesses brought in by the government (Huzaimah T. Yanggo, a professor of *sharīʿa* at State Islamic University, Jakarta, and member of MUI's *Fatwā* Commission, and Quraish Shihab, a professor of Qurʾānic exegesis). Yanggo maintained that polygamy does not fall under the category of worship (*ʿibāda*) in *sharīʿa*. Instead, the expert argued, it is classified under the aegis of social relations (*muʿāmalāt*), and its primary legal status is recognized within the five *sharīʿa* classifications of human actions, that is, mandatory, recommended, permissible/neutral, reprehensible, and prohibited. Since polygamy's status is permissible, statutory restrictions set up by the state are not in conflict with the religious freedom clause because not committing polygamy does not constitute a transgression against Islamic obligations on worship. As a result, polygamy's statutory restrictions do not contradict Islamic doctrines on marriage because they are intended to

ensure that the applicants observe the principle of fairness (*‘adl*) required for committing polygamy. The Court understands fairness in polygamy as requiring the husband’s ability to provide maintenance for wives and children and manage time for every household. It is the state’s obligation through its legislation and justice system to guarantee the realization of fairness for parties who would be affected by polygamy, especially women and children. Thus, the statutory restriction promotes the objective of (Islamic) marriage in Indonesia by setting up the optimum conditions for a tranquil, affectionate, and compassionate family (*sakinah, mawaddah, dan rahmah*).³²

The Court also confirmed state authority to regulate Islamic law and state obligations to regulate legal matters that would realize justice, including placing restrictions on polygamy. However, in doing so, the state’s action must not contradict Islamic jurisprudence (*fiqh*). The Court then quoted the testimony provided by Huzaimah T. Yanggo. According to Yanggo: “The state (*‘ūlu al-amr*) has the authority to determine the requirements which must be fulfilled by citizens who wish to enter into a polygamous marriage in the interest of the public, particularly to achieve the goals of marriage – that is, to create a happy and everlasting family (household) based on the [will of] God Almighty.”³³

From this case, we can see that a Muslim citizen challenged the government’s authority to interpret monogamy as a core principle of marriage principle and put statutory limitations on the practice of polygamy. The petitioner justified his arguments using the proofs of *sharī‘a* from the Qur’ān, Ḥadīth, and the doctrines of *fiqh* as provided by his expert witnesses. The Court, however, confirmed the government’s interpretation on this matter as provided by its expert witnesses who based their opinions on the distinction between *‘ibāda* (formal ritual) and *mu‘āmalāt* (social transactions) and the objective of marriage in Islam. The Court upheld statutory limitations for practicing polygamy as a legitimate interpretation of Islamic law on the ground that the government can legitimately intervene in order to realize the objectives of marriage, in this case, the principle of fairness, through legislation, and that this is compatible with *sharī‘a*, that is, as *siyāsa shar‘iyya*.

Halimah Versus the State (Valid Reasons for Divorce)

Halimah vs. the State’s petition is about the constitutionality of irreconcilable differences as a valid reason for divorce in Marriage Law No. 1 of 1974. It was made by Halimah, a housewife who married the high-profile Bambang Trihatmojo in 1981 (Bambang is the son of ex-President Suharto). Her divorce from Bambang attracted national attention because it was triggered by Bambang’s affair with a celebrity in 2002. Bambang then married the celebrity in an unregistered procedure while still married to Halimah. Halimah did not want to get a divorce, but Bambang filed a *ṭalāq*³⁴ divorce

with a Religious Court in 2007 because there were *irreconcilable differences/irretrievable breakdowns* between them. “Irreconcilable differences/irretrievable breakdown” is one reason for a divorce listed by the elucidation of Law No. 1 of 1974, art. 39(2).³⁵ In *Halimah vs. the State*, Halimah claimed that this provision violated her constitutional rights to legal protection and justice (the 1945 Constitution, art. 28D(1) and 28H(2)). Halimah also referred to *fiqh* to support her claims, which does not list “irreconcilable differences” as a reason for *ṭalāq* divorce. Instead, *sharīʿa* only mentions adultery, disobedience (*nushūdh*), drinking, gambling, or criminal acts as the grounds for divorce. To support her arguments, Halimah quoted a treatise on Islamic marriage law written by Mardani in 2011.³⁶ She also mentioned the Qurʾān chapter al-Nisāʾ verse 19, which contains an admonition against men who hurriedly divorce their wives.³⁷

Halimah brought expert witnesses to the Court: including a former Supreme Court Judge who has adjudicated many family law cases, Bismar Siregar J.; a Muslim feminist and research professor in Islamic studies who had been involved in Islamic family law reform in Indonesia, Siti Musdah Mulia; and a Muslim women activist who was also the wife of former President Abdurrahman Wahid, Sinta Nuriya. All the expert witnesses questioned the philosophical value of “irreconcilable differences” and argued its incompatibility with universal values of relationships between men and women set out in the Qurʾān and Ḥadīth. Siti Musdah Mulia, for example, stated that the Qurʾān and Ḥadīth never detail the reasons for a husband to enact a *ṭalāq* divorce on his wife validly.³⁸ The *fiqh*, however, does mention the reasons; Mulia quoted classical Muslim jurists’ commentary, namely, the practice of wife-initiated divorce, or *khulʿ*,³⁹ the existence of *khiyār*,⁴⁰ existence of *faskh*,⁴¹ existence of *nushūz* (a recalcitrant wife), and *zihār*.⁴² The statutory conditions for divorce in Muslim countries such as Indonesia and Malaysia are part of the state law’s statutory interpretation. According to Mulia, government interpretation of Islamic law is allowed, based on the doctrine of *siyāsa sharʿiyya* as per the treatises of classical jurists, such as al-Mawardī (d. 1058) and Ibn Taymiya (d. 1328). However, concerning “irreconcilable differences,” Mulia argued that this is not included in *siyāsa sharʿiyya* because it has no basis in Islamic teaching, is discriminatory against women, potentially harmful toward wives, and is incompatible with human rights protections upheld by the Constitution.⁴³

The Court, however, turned down her petition because her legal argument was without merit. Article 28H(2) of the 1945 Constitution concerns affirmative action; meanwhile, the relationship between husbands and wives in a marriage is equal under art. 31(1) of Law No. 1/1974 on Marriage. Thus, affirmative action is not needed. Furthermore, the Court viewed “irreconcilable differences” as a valid reason to terminate a marriage that is no longer in line with the marriage’s objective in the Marriage Law, namely, to build a tranquil, affectionate, and compassionate family (*sakinah, mawaddah, rahmah*). Thus, the law should provide a way to avoid unwanted adverse

events from a marriage experiencing irreconcilable differences, which may jeopardize one party's safety. By making "irreconcilable differences" one of the valid reasons for divorce, the law has given a precautionary step away from domestic violence occurring in such a marriage.⁴⁴ Interestingly, the Court backed up its legal reasoning by citing the Islamic principle of *sadd al-dharī'a* (blocking the means).⁴⁵

From this case, we can see that another Muslim citizen challenged the government authority in interpreting valid reasons to terminate a marriage and the legitimacy of such interpretation. The petitioner justified her arguments on the proofs of *sharī'a* from the Qur'ān and, most importantly, from doctrines of *fiqh* as provided by her expert witnesses. The Court, however, confirmed the government's interpretation and upheld that irreconcilable difference, despite its absence in the *fiqh* doctrine on divorce, is a legitimate interpretation of Islamic law. Introducing irreconcilable differences as a novel ground for divorce will realize the marriage's objective, for it will protect one party's safety and keep them safe from domestic violence that may occur within a troubled marriage.

Machica Versus the State (Illegitimate Children)

This petition *Machica vs. the State* is about the constitutionality of the illegitimate children provision in the Marriage Law No. 1 of 1974. The petitioner is Machica, a singer. She married Moerdiono according to Islamic law, but the marriage was unregistered under state law. Moerdiono was the Secretary Minister in Suharto's regime. When he married Machica, he was still married to his first wife. He contracted his marriage with Machica in compliance with the requirements of the *sharī'a*, that is, presence of a bride, a groom, marriage guardian of the bride, offer from the guardian (*ijāb*), and acceptance from the groom (*qabūl*). The child of their marriage, then, had only a legal relationship to his mother and the family of his mother's side, according to art. 43(1) of the Marriage Law. His parent's unregistered marriage does not have legal implications according to state law under art. 2(2) of the Marriage Law. Consequently, the child could not acquire his father's name (Moerdiono) or have this printed on his birth certificate. Machica then struggled to establish her marriage's legal status and her son's paternity, as required to claim child maintenance from Moerdiono, but she always failed.

After the Constitutional Court was established, she filed a petition to the Court in 2010 on the unconstitutionality art. 2(2) and 43(1) of the 1974 Marriage Law. She claimed that her son and herself had constitutional rights to form a family and enjoy decency through a valid marriage (art. 28B(1)), and for her son, the freedom to grow up free from discrimination (art. 28B(2)), and to be recognized and assured legal certainty and equality before the law (28D(1)). These she claimed were rights violated by the provisions above of Marriage Law. Furthermore, she believed that her

marriage to Moerdiono was valid under state law, as it was contracted in compliance with the requirements of *sharīʿa* (art. 2(1) of the 1974 Marriage Law). Hence, art. 43(1) of the Law Marriage should not be applied to her case.

To support her claim, Machica brought a professor of *sharīʿa*, Nurul Irfan of State Islamic University, Jakarta, as an expert witness who then testified that there is no requirement to register a marriage in *fiqh*. On the issue of a legitimate child, however, he criticized the provision of art. 42 “legitimate child is a child born within or as a result of a valid marriage” as conflicting with Islamic law principles. The word “within [a marriage]” will give legitimation to a child who was procreated before a marriage occurred, for example, in cases of adultery or fornication, but born within a valid [civil or religious marriage] marriage. The Qurʾān and Ḥadīth require a citizen to obey the government, including its law, as long as the law is not in conflict with the God’s provision. The provision of art. 42 of Law No. 1 of 1974 contradicts the principle of Islamic law, which considers a legitimate child born inside wedlock. Because the requirements of marriage registration and the status of a child born outside the wedlock have the quality of *siyāsa sharʿiyya*, he suggested to the Court that it considers whether keeping or removing them would mitigate the negative impact (*maḍārāt*) as per the canons of interpretation in Islamic law.⁴⁶

In 2012 the Court granted half of her petition, declaring art. 43(1) of the Marriage Law unconstitutional. The court, however, then qualified the article and pronounced it void (conditionally unconstitutional) unless it was read in the following way:

A child born outside the wedlock has only a civil relationship with her mother and her mother’s family [this is the text of art. 43(1)] ... *and with the man as her father and her father’s family, if the relationship can be proved using science and technology and other evidence according to the law, the child and the man have a blood relationship.*⁴⁷

According to the court, a woman cannot get pregnant without a man contributing his sperm; hence, it is injustice if the law says that the legal relationship of a child born outside the wedlock is only with her mother, as this releases the man whose sperm impregnated the woman from any legal responsibility to the child. Therefore, the law must give legal protection to every child, irrespective of her parents’ marital status, as long as it can be proved through science and technology that the man is her biological father.

As for the marriage registration provision (art. 2(1–2) of the Marriage Law), the Court decided that Machica’s claim was unwarranted. Article 2(1) states that a marriage is lawful if it is done according to the law of each religion and belief of the bride and groom. Article 2(2) adds that every marriage is recorded according to the prevailing laws and regulations. According to the Court, paragraphs (1) and (2) can be read separately

so that in Machica's, marriage registration is only a mere administrative requirement and does not cause a marriage to be invalid if it is not registered. Hence, the Court ruling on the Machica's confirmed the authority of *fiqh* in determining the validity of Muslim marriages because the fulfillment of Islamic matrimony requirements as embedded in *fiqh* is what makes a Muslim marriage legal.⁴⁸

All of the Constitutional Court decisions are final decisions. This norm, thus, will prevent future family law legislation in Indonesia, either the amendment of the 1974 Marriage Law or Islamic Family Law, from denying the legal relationship of children born outside of wedlock with their father. Given the magnitude of this decision's impact on the very foundation of Islamic family law in Indonesia, the *Fatwā* Commission of MUI issued a *fatwā* responding to the Court's decision. The subject matter of the *fatwā* reiterates author-jurists' opinions and previous *fatāwā* on the legal status of a child born outside of wedlock (e.g., adultery or fornication), namely, that the child's lineage, inheritance, and maintenance relationship is only with its mother and the mother's family. Nevertheless, the state can impose discretionary sanctions (*ta'zīr*) on a man who has caused the child's birth, such as providing child maintenance or making mandatory bequests for the child.

Then, MUI recommends the legislature and the government draft a law that will regulate adultery and fornication as common offenses punishable with severe punishments. Current criminal law only treats adultery as an offense when injured parties complain to the police. MUI's recommendation is to deter people from committing adultery and fornication. Meanwhile, the Court's decision would have the effect of encouraging people to commit adultery and fornication.⁴⁹ MUI also recommended the legislature revise the Law on the Constitutional Court by not allowing the Court to hear a petition whose decision is potentially at odds with the teachings of recognized religions in Indonesia. Second, if the Court's decision contradicts the teaching of religions recognized in Indonesia, it is not binding.⁵⁰ To this day, there is no resolution on this ultimatum because the legislature has not revised the Constitutional Court law.

From this case, we can see that the Court responded differently on *fiqh* versus statute authority. On the issue of marriage validity, the Court confirmed the authority of *fiqh* in determining the validity of Muslim marriages. However, on the children born outside of wedlock, the Court gave higher priority to the Constitutional norms to be observed. The Court did not distinguish in its decision between a child born within an unregistered marriage, yet valid religiously, and a child born outside of wedlock. Meanwhile, the classical *fiqh* states that the legal relationship of a child born outside of wedlock is only to its mother.

The previous section has illustrated how the authority and legitimacy of Islamic law are contested in the Constitutional Court. The following section looks specifically at Indonesia's Islamic marriage law as compiled

in the Compilation of Islamic Law of Indonesia (hereinafter KHI or *Kompilasi Hukum Islam*) and efforts to reform it by introducing a counter legal draft KHI, which is also known as CLD-KHI.

The Case of the Compilation of Islamic Law of Indonesia (KHI)

National Madhhab Versus Fiqh of Madhhab Eponyms

In 1991, President Suharto issued a decree to implement KHI as a guide for Religious Court Judges in adjudicating cases. Its implementation aims to help Islamic legal tradition keep pace with the requirement of Indonesia's modern legal system. Previously, the *sharī'a* judges of the Religious Courts referred to classical books of *fiqh* to adjudicate cases.⁵¹ As a result, discrepancies among the *sharī'a* judges' decisions for similar cases were considerable. Therefore, the promulgation of KHI was intended to be a standard code of Islamic family law (marriage, divorce, and inheritance plus trust law (*waqf*) to be used by the *sharī'a* judges to bring legal certainty back to the religious courts' decision).⁵²

The literature on the history of KHI formulation gives credit to the professors of *sharī'a* and judges of the *sharī'a* chamber of the Supreme Court who played an essential role in giving life to KHI.⁵³ Bustanul Arifin J., the Chief of Islamic Chamber of the Supreme Court and the founder and first president of Sultan Agung Islamic University, is considered the key actor. He proposed the project of KHI to President Suharto who in 1985 sanctioned its implementation by cooperative work between the Supreme Court and the Ministry of Religious Affairs. He was then appointed as the project leader. The project team comprised 16 committee members: 1 from the MUI, 8 from the Supreme Court, and 7 from the Ministry of Religious Affairs.

Earlier, I mentioned a legal indeterminacy of the Religious Courts' decisions due to the lack of a unified Islamic code. Besides, Bustanul Arifin J. was concerned with the suitability of classical texts referred to by the judges regarding Indonesia's conditions. His concern was with the importance of a state-sanctioned and a uniquely local, revised edition of *sharī'a* in Indonesia, which confirmed the earlier theses made by professors of *sharī'a* such as Hazairin, Hasbi ash-Shiddieqi, and Munawir Syadzali.⁵⁴

To establish a formula of Islamic law suitable for Indonesia, the committee employed the following methods in preparing the KHI draft: first, gathering material from classical *fiqh* by studying 38 authoritative works of *fiqh*. These books not only originate from the Shāfi'ī school of law, a *madhhab* widely used in Indonesia, but also from other Sunnī orthodox *madhāhib* of the Ḥanafīyya, Mālikīyya, Hanābila, and Ṣāḥiriyya schools. This stage was assisted by professors of *sharī'a* from seven Islamic universities in Indonesia (IAIN), who were asked to resolve legal questions devised by the project. Second, ulama were interviewed on legal problems

generated by the gap between the text of *fiqh* and social conditions in Indonesia. There were 166 ulama interviewed, and they represented various Islamic organizations and leading individuals in Indonesia. Third, they conducted comparative studies with some Muslim countries by sending some professors of *sharīʿa* to Egypt, Turkey, and Morocco. Finally, in 1988, they organized a workshop attended by MUI representatives, the Religious Courts, deans of *sharīʿa* schools, women's organizations, and independent scholars.⁵⁵

After three years of work, the draft was completed, but the draft was idle for three years because of a dispute over its status. There was a disagreement among the KHI drafting committee when they asked the government to give the new code a formal status. Some committee members thought KHI should be issued as a Law/Act (*Undang-Undang*). In contrast, others argued that it would be realistically formulated as a Presidential Decision (*Keputusan Presiden*), considering the cumbersome and difficult process to have Islamic law legislated in the legislature.⁵⁶ KHI was finally promulgated through a Presidential Instruction (*Instruksi Presiden* or *Inpres*) in 1991. Soon after that, KHI's legal status became part of an academic debate because an *Inpres* is not a formal mechanism for issuing law in Indonesia.⁵⁷ Ulama in Indonesia also challenged the legal status and the content of KHI. Conservative groups claimed that KHI had gone too far from traditional *fiqh* to achieve Islamic family law reforms that fit with the state's agenda.⁵⁸ Yahya Harahap J. (one of the drafting committee members) points out that the compatibility of KHI with traditional *fiqh* was not the primary concern of the drafters, as the traditional *fiqh* was the raw material used in the process of codification. Also, Yahya argues, the texts of *fiqh* are contextual, for they were selected and interpreted by their authors from the Qur'ān and Ḥadīth subject to the influences of their time and circumstances.⁵⁹ So, in the case of the inheritance law, for example, the KHI project team employed the principle of utility and public interest (*maṣlaḥa mursala*) and a right to exercise free *ijtihād* to include the provision of representation of heirs and obligatory bequest, by which inheritance rights are also conferred on orphaned grandchildren regardless their gender. This provision directly clashed with the established classical inheritance system in *fiqh*, stating that the share should only be conferred upon and divided among the deceased's collateral relatives (brothers and sisters).⁶⁰ Hooker points out, in his study of KHI as the "national school" of Islamic law in Indonesia, that there are five points of conflict between KHI and the classical *fiqh*, which potentially lead to objections and resistance toward its legitimacy.⁶¹ First, the prohibition of interreligious marriage; second, restrictions on polygamy; third, the introduction of minimum age for marriage and the displacement of the authority of the guardian; fourth, the intervention of the Religious Courts in the matter of divorce; and fifth, the introduction of joint property in inheritance.⁶²

An empirical study conducted by Euis Nurlaelawati on the application of KHI in the Religious Courts found that some judges in West Java province, who have been trained to use KHI during their studies, continue to adhere to the traditional legal doctrines of *fiqh* in cases where KHI deviates from it. These judges disregarded KHI provisions on inheritance, child custody rights (*haḍana*), the minimum age of marriage for girls and boys, as well as *ithbāt al-nikāḥ* (legalization of unregistered marriage); they apply the relevant principle drawn from *fiqh* texts, instead. For example, in one *haḍana* case, judges transferred custody to the father, even though the KHI rule devolves to mothers, provided that children are underage. In this case, the Court declined to apply that principle because it found that the mother had renounced Islam as her religion. The judges cited the opinion of the majority of jurists (Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī) that being Muslim is one of the qualifications for a person to be a guardian. Nurlaelawati also found that judges employed a public utility argument (*maṣlaḥa*) when they based their reasoning on classical *fiqh* texts rather than KHI.⁶³

This process suggests that, notwithstanding the codification of Islamic law principles within KHI, it does not enjoy universal acceptance. In practice, some judges in the Islamic Courts in Indonesia, for example, feel able to draw on classical *fiqh* as a primary resource to interpret, expand, or distinguish the statutory rules of KHI. This process of looking beyond the statute's text to support or validate judicial reasoning for "public policy" reasons is well known and routinely used in most modern legal systems, including ones in which Islamic law plays a core role. However, what is notable here is that the primary source being drawn upon, in at least some of the cases, is precisely the body of rules (classical *fiqh*) that KHI ostensibly displaced.

Counter Legal Draft of KHI: Ethics in the Qurʾān, Fiqh, and Human Rights

Both conservative and liberal groups criticized KHI. *Fiqh*-oriented groups, for example, accused KHI and its drafters of having distorted Islamic law. Liberal groups viewed KHI as having done little to elevate the status of women in marriage. They claim inherent gender biases, evident in articles that reflect outdated *fiqh* drawn from Middle Eastern perspectives rather than principles attuned to local Indonesian needs. For instance, this view was well articulated by the Working Group for Gender Mainstreaming Team of the Ministry of Religious Affairs, which proposed a Counter-Legal Draft of KHI in 2004 (hereinafter CLD-KHI). The working group was led by Siti Musdah Mulia, a professor of Islamic political thought at UIN Jakarta, who also previously received secondary education at a traditional Islamic school (*pesantren*). The ten working group members consisted of seven junior professors of *sharīʿa* and Islamic studies from state and private Islamic universities/colleges and three researchers (two from the Ministry of

Religious Affairs, one from an NGO research center). Half of the members were trained at *pesantren* for their secondary education, while the rest studied Islam during their tertiary education. They come from diverse Islamic organizations in Indonesia but arguably shared similar concerns about Islam's contemporary issues, such as pluralism, gender, and human rights. Interestingly, two members were active on the MUI board at the national level.⁶⁴

The working group worked for almost two years from 2003 to 2004 to come up with the formulation of Islamic law, which "may become the fundamental reference for a just society and which upholds values of humanity, respects women's rights, spread wisdom and kindness, and achieves wellbeing for all of humankind."⁶⁵ For this purpose, they reviewed KHI, studied the texts of classical *fiqh*, conducted fieldwork in several areas in Indonesia, examined opinions from ulama and legal experts, and organized public hearings. Some leading figures in *fiqh* and gender issues contributed to the work; they included Husein Muhammad (ulama) and Lies Marcoes-Natsir (a women activist).⁶⁶

Despite this process, the CLD-KHI received criticism from many quarters of the Indonesian Muslim community when it was finally launched on October 4, 2004. These criticisms were unsurprising because almost all KHI provisions, especially those considered to discriminate against women, were dismantled in the CLD-KHI draft. The drafters deconstructed KHI using invoking legal ethics and universal values of Islam induced from the Qur'ān, such as equality (*al-musawwā*), fraternity (*al-ikhā*), justice (*al-ʿadl*), usefulness (*maṣlaḥa*), human rights, pluralism, and gender equality.⁶⁷ Of 178 proposed articles of the CLD-KHI, 23 articles proposed substantive Islamic marriage law reforms. These included marriage registration as a legal condition for a valid marriage, polygamy disallowed and deemed void by law, the permissibility of interfaith marriages, equal shares for male and female heirs, and the principle of disobedience (*nushūz*) being also applied to the husband.⁶⁸ These radical measures can be seen as a move to evoke public awareness of some social problems stemming from KHI provisions. Such problems include the increasing number of abandoned wives and children due to polygamy and domestic violence against women.⁶⁹

As for methodology, the working group of CLD-KHI shared the same concerns as the drafters of KHI, that is, how to use the classical *fiqh* in making a code suitable to the circumstances of modern Indonesia instead of producing a code that was merely compatible with classical *fiqh*. Both groups, therefore, asserted their rights to exercise free *ijtihād* as well as employing nontraditional approaches to interpreting the religious texts, such as public utility (*maṣlaḥa*), custom (*ʿurf*), or the goals and objectives of *sharīʿa* (*maqāṣid al-sharīʿa*). However, the CLD-KHI working group went further with its approach by including social science perspectives grounded in human rights and gender studies. They argued that, as a result,

they shifted the paradigm in reading the religious texts from theocentric to anthropocentric, from elitism to populism, and from deductive to inductive thinking patterns.⁷⁰ According to the CLD-KHI team, the Qurʾān and Ḥadīth must be adjusted according to human thought and social situation of communities because they were revealed to serve human beings, not God.⁷¹ In order to do this, they came up with five standard interpretations: (i) making rules based on the objectives of the text of the Qurʾān/Ḥadīth, not on its literal words (*al-ʿibrā bi-l-maqāṣid la bi-l-alfāz*); (ii) that the text of the Qurʾān/Ḥadīth can be abrogated better to attain wellbeing (*jawāz al-naskh al-nuṣūṣ bi-l-maṣlaḥa*); (iii) that public reasoning has authority to amend the text of the Qurʾān/Ḥadīth (*tanqīḥ al-nusūkh bi-l-ʿaql al-mujtamāʿ*); (iv) that reasoning and tradition have the authority to interpret the texts specifically (*takhsīs bi-l-ʿaql wa-takhsīs bi-l-ʿurf*); and (v) that making a rule from a text of the Qurʾān/Ḥadīth is always related to the context in which it has been passed on, not based on common practice (*al-ʿibrā bi-khuṣūṣ al-sabāb la bi-ʿumūm al-alfāz*).⁷²

For example, Siti Musdah Mulia illustrates how the CLD-KHI applied this new approach in reading the Qurʾān to the inheritance share between male and female heirs. According to Mulia, the *tawhīd* (God’s oneness) principle must be employed to deal with a “difficult” verse such as the 2:1 share in the inheritance. Based on the *tawhīd* principle, every human is equal before God. *Tawhīd* must become the foundation of human freedom (especially for women and children) because they are the most oppressed group in human history. Parallel to *tawhīd* is the prohibition of *shirk* (association of anything with God), including praising other groups or giving them special privileges.

Further, through the gradual evolution of women’s situation from the pre-Islamic period (*jahiliyyā*) to the Prophet’s era, women’s complete emancipation was intended in Islam. Mulia and Cammack highlighted the contrast between women’s images in the Qurʾān, which guarantees freedom to participate in all forms of public life, versus the restrictions on women in contemporary life.⁷³ Thus, the 2:1 share is a mistake if it operates to justify discrimination against women because the spirit of the Qurʾān and Ḥadīth is equality, which was not achieved in the Prophet’s time in order to avoid social upheaval and in recognition of the (then) existing social structure, in which men bore the entire burden of family sustenance. However, by contrast, many women have become breadwinners for their families in contemporary Muslims’ lives.⁷⁴

This reformation of Islamic family law following gender and human rights perspective was welcomed by nearly all NGOs working on gender equality, justice, human rights, and pluralism in Indonesia⁷⁵ but rejected by major Islamic organizations in Indonesia, including MUI, Muhammadiyah, NU, and Islamic Defense Front (*Front Pembela Islam* [FPI]).⁷⁶ Huzaimah T. Yanggo, professor of *sharīʿa* from the State Islamic University (Universitas Islam Negeri, UIN) Jakarta and member of MUI’s

Fatwā Commission, was among the few who systematically critiqued the CLD-KHI from an Islamic jurisprudence point of view right after it was unveiled in 2004. Her response was expressed during a panel discussion organized by YARSI University of Jakarta on October 29, 2004, following the controversy over the CLD-KHI.

According to Yanggo, the radical changes to Islamic family law proposed by the CLD-KHI nullify the existence of specific verses in the Qurʾān and Ḥadīth which have direct legal significance because of their clear meaning, for example, the provisions regarding polygamy. According to art. 3(1–2) of the CLD-KHI: “the basic principle of marriage is monogamy (*tawaḥḥud al-zawj*); the marriage which is not conducted according to paragraph (1) is void.”⁷⁷ Thus, based on this article, polygamous marriage would be banned in Indonesia. In response to this article, Yanggo points out that there is no text (*naṣ*) of the Qurʾān and Ḥadīth which stipulate that polygamous marriage is invalid. On the contrary, chapter al-Nisāʾ (31) states that polygamous marriage is legal and can be carried out subject to fairness.⁷⁸

Another example is an interfaith marriage. The provision on interfaith marriage was proposed by the CLD KHI because there have been cases of interfaith marriage in Indonesia. Unfortunately, Indonesia’s current marriage laws (UU No 1/1974 and KHI) do not accommodate this kind of marriage. As a result, one party has to convert to the other party’s religion to contract the marriage legally in Indonesia. If each party wishes to maintain his/her religion, they usually go abroad to contract their marriage and register it in a civil registry office in Indonesia. Again, according to Yanggo, the CLD-KHI provision overtly contravenes the *sharīʿa*. She bases her arguments on chapters al-Baqara (221); al-Mumtaḥana (10); al-Māʾida (5), which are combined with the *fatwā* of MUI and Ibn ʿUmar (d. 693), a foremost authority in Ḥadīth and *fiqh*, regarding the “corruption” (*maḥṣada*) of interreligious marriage, which outweighs its benefits (*maṣlaḥa*), and the *ijmāʿ* (consensus) of Muslim jurists regarding the prohibition of Muslim women marrying non-Muslim men.⁷⁹

Criticism was directed at the content and the methodology and approach employed by the CLD-KHI. According to Rifyal Kaʾbah (professor of *sharīʿa* of YARSI University and a Supreme Court Judge), who was also a panelist of the discussion, new concepts outlined by the CLD-KHI were not consistent with Islamic law reformation; instead, they contravene the original concepts of Islamic law. The approaches employed by the CLD-KHI drafters were not Islamic law approaches. The CLD-KHI drafters employed gender, pluralism, human rights, and democracy as their approaches because the objectives of *sharīʿa* are to uphold social justice values, the wellbeing of the human race, mercy for the universe, and social virtues. Meanwhile, he argued the true objectives of the *sharīʿa* (*maqāṣid al-sharīʿa*) are to safeguard one’s religion, life, intellect, posterity, and wealth.⁸⁰ Based on this, it can be understood why the opponents

of the CLD-KHI reject, for example, interreligious marriage because the value of “safeguarding the religion” should take precedence over “human rights” or “pluralism.” The opponents of the CLD-KHI draft see the possibility of giving up Islam by committing an interreligious marriage.

Likewise, Yanggo criticized the methodology and approaches of the CLD-KHI as biased, emotional, and deconstructive. To the CLD-KHI drafters, the Qurʾān and Ḥadīth must be adjusted according to the human thought and social situation of the relevant communities. Thus, independent reason (*raʾy*) may amend the texts of the Qurʾān and their univocal language (*nuṣuṣ*) employing *maṣlaḥa* (public utility).⁸¹ Here, we can see that the opponents support the traditional sources of Islamic legal theory, which is very normative-deductive in approaching religious texts. Consequently, human beings cannot go beyond the text, especially textual provisions expressed unambiguously or univocally. The authority to make law lies in God’s hands, while human beings, in line with Muslim jurists’ role for centuries, seek only to discover the law from the texts. Therefore, the radical changes proposed by the CLD-KHI are accused of not being Islamic law because they contradict the texts and even make new rules out of the texts.

However, the CLD-KHI drafters rebutted the accusation of not basing their arguments on the Qurʾān. They maintained that the texts’ universal injunctions about justice, *maṣlaḥa*, pluralism, human rights, and gender equality are employed in formulating the CLD-KHI. Through an empirical-inductive approach outlined in their interpretation standards set out above (see endnote 71), these universal injunctions are given precedence over particular injunctions relating to polygamy, interreligious marriage, and the two-to-one inheritance share in favor of men. Instead of solving the legal problems faced by Muslims in Indonesia, the particular injunctions themselves have become problems that have to be solved in the contemporary world.⁸² Thus, the KHI principles can no longer accommodate developments within Indonesian society.

Moreover, many provisions of KHI are based on particular injunctions without further contextual readings. Further, if the modern legal system and government policy are taken into account, KHI must be amended by the government to be compatible with its current policy.⁸³ Here we can see that the CLD-KHI drafters assert their right to exercise free *ijtihād* by directly interpreting the religious texts using primarily social science approaches. Classical *fiqh* is no longer a source of authoritative law in Indonesia, given the different circumstances between contemporary Indonesia and the premodern Middle East, where the classical *fiqh* was formulated and standardized.

As with the Marriage Law drafting process in the 1970s, the CLD-KHI draft was withdrawn not to create unrest among Muslims. Then, the minister of Religious Affairs dissolved the working group and removed the CLD-KHI from the Ministry of Religious Affairs’ agenda on February 14, 2005.⁸⁴

Hence, we see in this process a reformist and pluralist drafting group convened by the government under the Ministry of Religious Affairs that produces a progressive and rather dramatic rewriting of Islamic family law principles for Indonesia. These were critiqued from many quarters. Rather than pushing forward with a revision of Indonesian Islamic law's codification represented by KHI, the Ministry withdrew the draft. This process revealed that several Islamic organizations and voices exercise a "veto" over the progressive draft, but it is not clear which, if any, played a definitive role in blocking the proposed direction of family law reform.

Conclusion

In these episodes of judicial reasoning and legislative drafting and revision regarding family law in Indonesia, we see that determining who has the authority to declare which sources of Islamic law are authoritative is not a clear-cut exercise. We see that author-jurists and jurisconsults (generically called *ulama* in Indonesia⁸⁵) – who traditionally authorized and legitimized Islamic law and its interpretation – now have rivals from their colleagues (professors/researchers, judges, and activists) who were traditionally not considered part of the epistemic community of Islamic authority. This rivalry and expansion of the epistemic community have been made possible because the government authorized professors/judges *qua* professors or researchers to draft Islamic "state" law.

The traditional textual sources of authority are also in question. We find that the classical *fiqh* of *madhhab* eponyms has mainly been treated as the primary Islamic law source in Indonesia. However, reformist jurists (from among *ulama*, professors/researchers, and Supreme Court judges) have now challenged this by resolving contemporary legal problems faced by Muslims in Indonesia by referring directly to the Qur'ān. They invoke traditional Islamic legal theory (*uṣūl al-fiqh*) combined with insights from humanities and the social sciences, as illustrated in the Constitutional Court case reasoning in *Machica vs. the State* and the history of failed attempts to reform KHI through the CLD-KHI.

This synthetic approach is made possible because *ulama qua* professors/researchers and judges are conversant with developing different Islamic law approaches in the contemporary world as part of their training in *sharī'a* law school.⁸⁶ Moreover, they use the approach to accommodate multiple authorities of textual sources for Islamic law in Indonesia. Therefore, their decisions consist of Islamic and non-Islamic legal instruments, reflecting both their tribute to Islamic legal norms and their goal to transform *sharī'a* principles in the light of contemporary human rights.

Having examined the case of legislative reform and codification of Islamic family law, we are left wondering whether the historical structure of authority of Islamic law in Indonesia has been transformed, considering the active role of professors/researchers and judges reshaping Islamic law

in Indonesia. This case study also asks whether we can only look to the traditional authority to ascertain whether the legislation or codification of Islamic law violates *sharīʿa*.

These judicial and legislative drafting debates concerning family law in Indonesia do not reveal any single Islamic actor as having an authoritative voice or veto power that shapes the interpretation or creation of Islamic law norms in Indonesia. By contrast, however, recent developments in Islamic legislation and codification in Islamic transaction laws (*muʿāmalāt*) and food regulation suggest a different pattern of institutionalizing authority over Islamic law interpretation. This development is interesting because it is consistent with earlier studies that argue that MUI has acted as the guardian of Islamic law in Indonesia in that state laws and regulations do not contradict *sharīʿa*. This proposition is explored and tested in this book, which outlines the role of MUI in developing a *fatwā* regarding the latest legal field of corporate zakat.

Notes

- 1 According to the Pew Research Center, Indonesia is a nation home to 12.7% of the world's Muslims; Pakistan, India, and Bangladesh come after Indonesia, where the percentages of the world's Muslims are 11%, 10.9%, and 9.2%, respectively. See Pew Research Center, "Muslim Population by Country," <http://www.pewforum.org/2011/01/27/table-muslim-population-by-country/> (accessed April 25, 2015).
- 2 There have been several attempts to incorporate *sharīʿa* as the law that Indonesian Muslims must observe, but all have failed. For the initial effort to incorporate *sharīʿa* into the Constitution during the preparation of the independence, see, for example, Anthony H. Johns, "Indonesia: Islam and Cultural Pluralism," in *Islam in Asia: Religion, Politics and Society*, ed. John L. Esposito (New York: Oxford University Press, 1987), 210; Robert W. Hefner, *Civil Islam: Muslim and Democratization in Indonesia*, 1st ed. (Princeton, NJ: Princeton University Press, 2000), 42; B.J. Boland, *The Struggle of Islam in Modern Indonesia* (The Hague: Nijhoff, 1982), 26; for the latest effort during the constitutional reform period 1999–2002, see, for example, Nadirsyah Hosen, "Religion and the Indonesian Constitution: A Recent Debate," *Journal of Southeast Asian Studies* 36, no. 3 (October 2005): 419–420, 425–427.
- 3 See Wahiduddin Adams, *Pola Penyerapan Fatwa Majelis Ulama Indonesia (MUI) dalam Peraturan Perundang-Undangan 1975–1997* (Jakarta: Bagian Proyek Peningkatan Informasi Penelitian dan Diklat Keagamaan, 2004), 121–225.
- 4 See Ann Elizabeth Mayer, "The Shari'ah: A Methodology or a Body of Substantive Rules?" in *Islamic Law and Jurisprudence*, ed. Nicholas Heer (University of Washington Press, 1990), 178.
- 5 See details about the sources of *sharīʿa* in, for example, Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 2003), 16–305; Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997), 7–35.
- 6 Mayer, "The Shari'ah," 184.
- 7 Mayer, 184.

- 8 Mayer, 184.
- 9 *Mujtahid mustaqīl* is the highest level of *mujtahid* where a *mujtahid* performs *ijtihād* by employing his methodology and derives a ruling without relying on the view of other jurists. According to Wahbah al-Zuhayli, there are five *mujtahid* levels, and each level determines the level of competence to perform *ijtihād*. The second rank stands the *mujtahid*, who has the qualifications to perform *ijtihād* but follows his guild's eponym (*mujtahid muṭlaq ghayr mustaqīl*). Next, it is a jurist who follows an eponym but performs *ijtihād* by examining the guild's arguments to defend his guild's position or explain his guild's opinion about *fiqh* (*mujtahid takhrīj*). Fourth, a jurist performs *ijtihād* by choosing one from several opinions proposed by *mujtahid* (*mujtahid tarjīh*). Lastly, *mujtahid futya* or a jurist issues a *fatwā* (a ruling on the point of Islamic law). To know more about this level of *mujtahid*, see Wahbah al-Zuhayli, *Uṣūl al-fiqh al-Islamī*, Vol. 2 (Damaskus: Dar al-Fikr, 1986), 1079–1081.
- 10 According to Hallaq, the study on the development of Islamic law after the establishment of Islamic schools of the law reveals that the notion of “*insidād al-bāb al-ijtihād*” is untenable because every period has *mujtahid* who performed *ijtihād* and went beyond the methodology of their guild's eponym and, to some extent, practiced eclecticism. See Wael B. Hallaq, “Was the Gate of *Ijtihād* Closed?” *International Journal of Middle East Studies* 16, no. 1 (1984): 3–41.
- 11 Mayer, “The Shari`ah,” 186.
- 12 Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 167, 173, 233–235.
- 13 Hallaq, *Authority*, 167, 233–235.
- 14 Indonesia has ratified numerous international human rights legal instruments such as ICCPR in 2006 without reservation, CAT in 1998 (reservation to art. 30(1), CEDAW in 1984 (reservation to art. 29(1)), and Convention on the Right of Child (CRC) in 1990 (reservation art. 1, 14, 16, 17, 21, 22, and 29). Regarding family law reform, the government has made gender equality a part of its national agenda. For example, the President issued a decree in 2000 for mainstreaming gender equality in national development by which every ministry and state department are required to include gender equality in their policy and agenda. Department and commissions on women empowerment and children have also been established in the 2000s; see Alfitri, “Legal Reform Project, Access to Justice and Gender Equity in Indonesia,” *Indonesian Journal of International Law* 9, no. 2 (2012): 302; Alfitri, “Konflik Hukum antara Ketentuan Hukum Pidana Islam dan Hak-Hak Sipil? (Telaah Konsep HAM dan Implementasi Ratifikasi ICCPR dan CAT in Indonesia,” *Jurnal Konstitusi* 7, no. 2 (2010): 102, 126.
- 15 Norman Anderson extensively explained modernist methods of law reform and classified them into five expedients. They are (1) the procedural expedient: “the right of the Ruler to define and confine the jurisdiction of his courts” (*takhsīṣ al-qaḍāʾ*), for example, restriction on the *sharīʿa* courts to questions pertaining only to Islamic personal law and gifts and *waqf*; (2) the eclectic expedient (*takhayyur*); (3) the expedient of re-interpretation, that is, maintaining the right of independent *ijtihād* by direct encounter with the Qurʾān and Ḥadīth and bypassing *ijmāʿ*; (4) the expedient of administrative orders, that is, a legislative enactment which find its justification, not in the provision of *sharīʿa per se*, but rather, in the condition that it is regarded as beneficial and ‘not contrary to the *sharīʿa*; and (5) the expedient of reform by judicial decisions, especially in Muslim countries formerly under British rule; see Norman Anderson, *Law Reform in the Muslim World* (London: Athlone Press, 1976), 42–85.

- 16 R. Michael Feener, "Muslim Legal Thought in Modern Indonesia: Introduction and Overview" in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, eds. R. Michael Feener and Mark E. Cammack (Cambridge: Harvard University Press, 2007), 13–26.
- 17 Katz and Katz wrote that it was not clear who created the draft. However, they quoted a source from *Tempo* (a leading national magazine which voices a national-secularist point of view) that the draft was written by the Catholic member of *Golkar* (the government political party) as per the suggestion of Tien Suharto, the President wife. Meanwhile, the Department of Religion and Islamic leaders (called *ulama* in Indonesia and this include Muslim jurists) had not been given a role in drafting the bill. See June S. Katz and Ronald S. Katz, "The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems," *American Journal of Comparative Law* 23, no. 4 (Autumn, 1975): 660.
- 18 The background was the failure of several efforts to formulate a unified national marriage law. In 1952, the Minister of Religion already formed a Governmental Committee to draft a marriage bill. However, the Muslim Marriage law draft produced by the Committee in 1954 fell through in the Legislature because of a deliberation deadlock. In 1967 and 1968, the government resubmitted a marriage bill for Muslim Indonesians and a marriage bill applicable to all religions Indonesia subsequently, but this also produced no result after the deliberations in the Legislature from 1967 to 1970. See Azyumardi Azra, "The Indonesian Marriage Law of 1974: An Institutionalization of the *Shari'a* for Social Changes" in *Shari'a and Politics in Modern Indonesia*, eds. Arskal Salim and Azyumardi Azra (Singapore: Institute of Southeast Asian Studies, 2003), 82.
- 19 See Mark Cammack, Lawrence A. Young, and Tim Heaton, "Legislating Social Change in an Islamic Society – Indonesia's Marriage Law," *American Journal of Comparative Law* 44 (1996): 61–62; Mark E. Cammack, Helen Donovan, and Tim B. Heaton, "Islamic Divorce Law and Practice in Indonesia" in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, eds. R. Michael Feener and Mark E. Cammack (Cambridge, MA: Islamic Legal Studies Program, Harvard Law School, 2007), 99–100; Simon Butt, "Polygamy and Mixed Marriage in Indonesia: The Application of Marriage Law in the Courts" in *Indonesia: Law and Society*, ed. Tim Lindsey (Leichhart, NSW: The Federation Press), 122–123.
- 20 See Katz and Katz, "New Indonesian," 661–662.
- 21 See Katz and Katz, "New Indonesian," 663–666; see also Cammack, Young, and Heaton, "Legislating," 61–62; Cammack, Donovan, and Heaton, "Islamic," 99–100; Butt, "Polygamy," 122–123.
- 22 See Cammack, Young, Heaton, "Legislating," 45; Azyumardi Azra, "The Indonesian," 78.
- 23 On the partial impact of the Marriage Law on the practice of divorce, see Cammack, Donovan, and Heaton, "Islamic," 99–127; on the practice of child marriage, see Cammack, Young, and Heaton, "Legislating," 45–73; on the practice of unregistered marriage (including polygamy without permission of the religious courts), see Stijn Cornelis van Huis and Theresia Dyah Wirastri, "Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws," *Australian Journal of Asian Law* 13, no. 1, Art. 5 (2012): 1–17.
- 24 For example, the Nahdlatul Ulama issued a *fatwā* in 1989 on the same effect and consequences of an extra-judicial *ṭalāq* divorce as a *ṭalāq* divorce pronounced in court as required by the 1974 Marriage Law, see Cammack, Donovan, and Heaton, "Islamic," 125–126.

- 25 Huis, "Muslim," 2, 5–6, 10; see also "Hasyim Muzadi: Nikah Siri Sanksi Administrasi Sajalah," <http://oase.kompas.com/read/2010/02/19/13064577/Hasyim.Muzadi.Nikah.Siri.Sanksi.Administrasi.Sajalah> (accessed April 1, 2013); "Syafii Maarif: Nikah Siri Sah, tapi Lebih Baik Dicatatkan," <http://megapolitan.kompas.com/read/2010/02/17/20163935/Syafii.Maarif.Nikah.Siri.Sah.tapi.Lebih.Baik.Dicatatkan> (accessed April 1, 2013); "MUI: Kawin Siri Haram Kalau Ada Korban," <http://kesehatan.kompas.com/read/2010/02/16/0716178/MUI.Kawin.Siri.Haram.kalau.Ada.Korban> (accessed April 1, 2013).
- 26 See "MUI: Kawin Siri Haram Kalau Ada Korban." About the *fatwā*, see Majelis Ulama Indonesia, *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975* (Jakarta: Sekretariat MUI – Penerbit Erlangga), 531–534.
- 27 The bill of rights resulted from the second amendment to the 1945 Constitution, passed on August 18, 2000. The second amendment has brought about significant change to the 1945 Constitution by introducing, *inter alia*, the bill of rights, which was promulgated explicitly under the chapter XA comprising ten recent articles (28A–28J). This bill of rights acknowledges and guarantees civil, political, economic, and cultural rights to Indonesian citizens, which are more compatible with the international human rights instruments due to their ratifications to the Indonesian legal system.
- 28 Once approval from a first wife was received, the Religious Courts would proceed to determine whether an application for the polygamous marriage granted based on the first wife conditions, namely, whether she can perform her role as a wife; whether she acquired disability or incurable diseases; whether she can give birth to offspring. See Law No. 1 of 1974 on Marriage, art. 4(1–2), 5(1).
- 29 *Ibid.*, art. 3(1–2), art. 4(1–2), art. 5(1), art. 9, art. 15, and art. 24.
- 30 The 1945 Constitution of Indonesia, art. 28B(1): that is, right to marry and found a family, art. 28E(1): that is, right to hold a religion and to manifest it, art. 28I(1–2): that is, religious rights are non-derogatory, and freedom from any forms of discrimination, art. 29(1–2): that is, the state is based on belief in the Almighty God, and religious freedom is guaranteed.
- 31 See *Muhammad Insa v. the State* (No. 12/PUU-V/2007), p. 17.
- 32 *Ibid.*, pp. 93–96, 97–99.
- 33 *Ibid.*, para. 3.15.4.
- 34 In Islamic jurisprudence, *ṭalāq* is the husband's right to dissolve the marriage by merely announcing to his wife that he repudiates her. In the contemporary application of Islamic law in Indonesia, this right may only be legally exercised by the husband by filing a divorce lawsuit through the Religious Court.
- 35 Irreconcilable differences as a ground for divorce are also mentioned in art. 19(f) of Government Regulation No. 9 of 1975 and the Compilation of Islamic Laws (KHI) in art. 116(f), which both regulate the Marriage Law to a degree.
- 36 There is no complete information about this book in the text of the Court decision; online searching also could not find this book to verify more about the author's biography.
- 37 *Halimah v. the State* (No. 38/PUU-IX/2011), pp. 3–6.
- 38 *Ibid.*, 14.
- 39 "A divorce at the instance of the wife, who must pay compensation to the husband." See "*khul*" in *Encyclopaedia of Islam, Second Edition, Glossary and Index of Terms*, ed. A.B. Brill Online, 2013. Reference University of Washington Libraries. http://referenceworks.brillonline.com/offcampus.lib.washington.edu/entries/encyclopaedia-of-islam-2-Glossary-and-Index-of-Terms/khul-SIM_gi_02358.

- 40 “The right for the parties involved to terminate the legal act unilaterally.” *Khiyār* may apply in incompatible marriages, or when a minor below puberty has been married by a legal guardian (*wāli*) other than her father or grandfather. So, when the minor reaches his majority, he can choose between maintaining the marriage or dissolving it. See “*Khiyār*,” *Encyclopaedia of Islam, Second Edition*. Brill Online, 2013. Reference. University of Washington Libraries. http://referenceworks.brillonline.com.offcampus.lib.washington.edu/entries/encyclopaedia-of-islam-2/khiyar-COM_0509.
- 41 Dissolution of marriage by means of *faskh* takes place at the instance of the wife or her relatives. In contemporary era, it is carried out by judicial process. *Faskh* may apply in marriage cases of failure to fulfill an express or implied condition, as well as those cases where the contract is vitiated by some irregularity. The reasons for dissolution of marriage by way of *faskh* are defined by the law. Usually, *faskh* constitutes the legal means open to the wife of dissolving the conjugal tie in case of serious cruelty. Chafik Chehata, “*Faskh*,” in *Encyclopaedia of Islam, Second Edition*. Brill Online, 2013. Reference. University of Washington Libraries. http://referenceworks.brillonline.com.offcampus.lib.washington.edu/entries/encyclopaedia-of-islam-2/faskh-SIM_2316.
- 42 “An insult proffered by a husband upon his wife which likens the wife to some prohibited female relation of his, and exposes the husband to divorce.” See <http://www.duhaime.org/LegalDictionary/Z/Zihar.aspx> (accessed April 22, 2013).
- 43 *Halimah v. the State* (No. 38/PUU-IX/2011), pp. 14–19.
- 44 *Ibid.*, p. 43.
- 45 *Ibid.*
- 46 *Machica v. the State* (No. 46/PUU-VIII/2010), pp. 12–14.
- 47 *Ibid.*, pp. 35–36. Italics from the author.
- 48 *Ibid.*, pp. 33–34.
- 49 *Fatwa Majelis Ulama Indonesia No. 11 of 2012 concerning the Status of Children Born outside Wedlock and Treatment to Them*. Hardcopy available with author.
- 50 *Tanggapan Majelis Ulama Indonesia Indonesia terhadap Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 Pengujian UU No. 1 Tahun 1974 tentang Perkawinan*. Hardcopy available with author.
- 51 There were thirteen books of *Shāfiʿī fiqh* designated as the standard books used by the Religious Judges according to the Circular Letter of the Ministry of Religious Affairs in 1958. See Jan Michiel Otto, *Sharīʿa Incorporated: A Comparative Overview of the Legal System of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 486. For the list of 13 books, see M.B. Hooker, *Islamic Law in South-East Asia* (Singapore: Oxford University Press, 1984), 279–280.
- 52 See Otto, *Sharīʿa*, 459.
- 53 See, for example, Ahmad Imam Mawardi, “The Political Backdrop of the Enactment of the Compilation of Islamic Laws in Indonesia,” in *Shariʿa and Politics in Modern Indonesia*, eds. Arskal Salim and Azyumardi Azra (Singapore: Institute of Southeast Asian Studies, 2003); M.B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: ISEAS, 2008); Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010).
- 54 See Hooker, *Indonesian Syariah*, 21; Nurlaelawati, *Modernization*, 218.
- 55 Mawardi, “The Political,” 127–131.
- 56 The latest example that shaped these committee members’ concern was the legislative process of Law No. 7 of 1989 concerning Religious Courts. Aware of this situation and wanting to take advantage of it to gain Muslims’ support

- of his leadership for the following terms, President Suharto issued the KHI as a Presidential Instruction. See the political rationale behind KHI in Mawardi, "The Political," 136–138.
- 57 A. Hamid S. Attamimi, a law professor from Universitas Indonesia, argues that KHI has limited legal force because of its status as an *Inpres*. Unlike *Keputusan Presiden* (Presidential Decision or now become *Peraturan Presiden* (Presidential Regulation)), an *Inpres* does not have the normative characteristic to impose an abstract rule to the public continuously (*dauerhaftig*). Instead, an *Inpres* is used to direct and guide government officials in implementing their tasks and jobs. Thus, it is individual and concrete and, once applied, completed (*enmahlig*). See A. Hamid S. Attamimi, "Kedudukan Kompilasi Hukum Islam dalam Sistem Hukum Nasional: Suatu Tinjauan dari Sudut Teori Perundang-undangan Indonesia," in *Dimensi Hukum Islam dalam Sistem Hukum Nasional: Mengenang 65 Tahun Prof. Dr. H. Bustanul Arifin, SH.*, eds. Amrullah Ahmad et al. (Jakarta: Gema Insani Press, 1996), 153–154.
 - 58 Even two Islamic organizations in Indonesia, Muhammadiyah and Nahdlatul Ulama, whose views represent moderate Islam, have strongly criticized KHI as an immature product. Nahdlatul Ulama says it lacks (sufficient grounding in) *fiqh*, while Muhammadiyah sees that it lacks a clear rationale grounded in the Qur'ān. See Nurlaelawati, *Modernization*, 220; see also for inheritance law case in Mark Cammack, "Inching toward Equality: Recent Developments in Indonesian Inheritance Law," *Indonesian Law and Administration Review* 5, no. 1 (1999): 19–50.
 - 59 As quoted by Tim Lindsey, *Islam, Law and the State in Southeast Asia* (London, New York: I.B. Tauris, 2012), 72.
 - 60 See Nurlaelawati, *Modernization*, 219. See Hooker, *Indonesian Syariah*, 22–25.
 - 61 Hooker, *Indonesian Syariah*, 22–25.
 - 62 Hooker, 22–25.
 - 63 Nurlaelawati, *Modernization*, 221.
 - 64 For details about education, occupation, and organization of the working group, see Marzuki Wahid, "Reformation of Islamic Law in Post-New Order Indonesia: A Legal and Political Study of the Counter Legal Draft of the Islamic Law Compilation" in *Islam in Contention: Rethinking Islam and the State in Indonesia*, eds. Ota Atsushi, et al. (Jakarta, Kyoto, Taiwan: Wahid Institute-CSEAS-CAPAS, 2010), 84–86.
 - 65 This is the objective of the Counter Legal Draft of the KHI written in the book prepared by the working group. The book contains 178 proposed rules on marriage, inheritance, and bequest law. See Tim Pengarusutamaan Gender Departemen Agama RI, *Pembaruan Hukum Islam: Counter Legal Draft Kompilasi Hukum Islam* (Jakarta: Departemen Agama, 2004), 8.
 - 66 Wahid, "Reformation," 86.
 - 67 Tim Pengarusutamaan Gender Departemen Agama RI, *Pembaruan*, 7–8.
 - 68 Complete information about these substantive reforms' proposal, see Wahid, *Reformation*, 80–82; Tim Lindsey, *Islam*, 84–88.
 - 69 Siti Musdah Mulia, "A Revision to Islamic Law Book," *The International Center for Islam and Pluralism* 2, no. 3 (2005): 4.
 - 70 Tim Pengarusutamaan Gender Departemen Agama RI, *Pembaruan*, 22–23.
 - 71 Tim Pengarusutamaan Gender Departemen Agama RI, 22–23.
 - 72 Tim Pengarusutamaan Gender Departemen Agama RI, 23–24; see also Abd Moqshit Ghazali, "Argumen Metodologis CLD KHI," <http://islamlib.com/id/index.php?page=article&id=774> (accessed September 24, 2005); Wahid, "Reformation," 93–94; Lindsey, *Islam*, 89.
 - 73 Siti Musdah Mulia and Mark Cammack, "Toward a Just Marriage Law: Empowering Indonesian Women through a Counter Legal Draft to the

- Indonesian Compilation of Islamic Law,” in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, eds. R. Michael Feener and Mark Cammack (Cambridge: Harvard University Press, 2007), 135–138.
- 74 Mulia and Cammack, “Toward a Just Marriage,” 135–138.
- 75 These include the National Commission on Violence against Women, Fahmina Institute, the Institute for Gender and Religious Studies, Rahima, Puan Amal Hayati, Women’s Journal, Women Study Center, Kalyana Mitra, Kapal Perempuan, Solidaritas Perempuan, LBH APIK, Fatayat NU and Rifka An-Nisa; see Wahid, “Reformation,” 103.
- 76 For complete list of the organizations and their comments, see Wahid, “Reformation,” 98–103.
- 77 Tim Pengarusutamaan Gender Departemen Agama RI, *Pembaruan*, 36.
- 78 Chamzawi, “Sebuah Catatan tentang Kontroversi Revisi Kompilasi Hukum Islam”, http://www.yarsi.ac.id/kolom_chamzawi/detail.php?id=26 (accessed October 6, 2005); see also Wahid, “Reformation,” 101–103.
- 79 See Chamzawi, “Sebuah”; Wahid, “Reformation,” 101–103.
- 80 See Chamzawi, “Sebuah”; about the concept of *maqāṣid al-sharʿa*, see, for example, al-Ghazali, *al-Mustasfa* (Cairo: al-Maktabah at-Tijariyyah al-Kubra, 1937), I: 139–140.
- 81 See Chamzawi, “Sebuah,”; see also Wahid, “Reformation,” 101–103; Lindsey, *Islam*, 91.
- 82 See Ghazali, “Argumen.”
- 83 See Wahid, “Reformation,” 94–96.
- 84 See Wahid, “Reformation,” 106; Lindsey, *Islam*, 91.
- 85 Specialist terms for Muslim jurists or *fuqaha* in Indonesia, such as author-jurists (*muṣannif*) and jurisconsults (*muftī*), are not commonly used in Indonesia. See Mohammad Atho Mudzhar, *Fatwas on the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975–1988* (Jakarta: INIS, 1993), 3.
- 86 For a comprehensive discussion on *sharʿa* education in Indonesia, especially on tertiary level, see Ayumardi Azra, “Islamic Legal Education in Modern Indonesia,” in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, eds. R. Michael Feener and Mark E. Cammack (Cambridge, MA: Harvard University Press, 2007), 257–270. For comprehensive discussion on Islamic education on all levels in Indonesia, see Lindsey, *Islam*, 217–251.

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Part II

Law in the Book



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3 INTERPRETING CORPORATE ZAKAT: MUI AND ISLAMIC AUTHORITY

This chapter focuses on how Indonesia's Islamic legal authority has responded to corporate zakat as a new religious obligation in Islam. It will analyze ulama's opinions on this matter, especially those affiliated with the Council of Indonesian Ulama (*Majelis Ulama Indonesia*, hereinafter MUI), to understand their methods and arguments in advancing their opinions and what this says about Islamic authority in Indonesia.

The discussion in this chapter begins with an overview of MUI's origin and development and the relationship between MUI's *fatāwā* (Ar. sg. *fatwā*) and the state's legislative agenda, especially in the area of the *sharī'a* economy (*mu'āmalāt*). Why have MUI *fatāwā* been so influential in this new regulatory domain, even though the organization possesses no monopoly over *fatāwā* issuing authority in Indonesia? The role of MUI in this regulatory domain is emphasized because of the expansion and subsequent institutionalization of MUI's formal role in the state system for administering Islamic legal tradition in the *sharī'a* economy.¹

In Chapter 2, I described the plurality of sources of authority for Islamic law in contemporary Indonesia – both institutional actors and textual sources – as they operate within the domain of family law. By contrast, however, recent developments in Islamic legislation and codification in the field of *sharī'a* economy suggest a different pattern of institutionalizing authority over Islamic law interpretation. For example, in Islamic financial services, the state now institutionalizes a mechanism for ascertaining *sharī'a* compliance of Islamic banks in Indonesia. Thus, the state invests MUI with authority to determine *sharī'a* compliance, and the *Sharī'a* National Board, an MUI organ, carries out this role by issuing *fatāwā* related to financial services. Their implementation is supervised at the financial institution level by the *Sharī'a* Supervisory Board, which is appointed on the recommendation of the *Sharī'a* National Board.² The *Sharī'a* National Board *fatāwā* are then absorbed into the Central Bank Regulations through a regulatory process within the *Sharī'a* Banking Committee, which is under the authority of the Central Bank.³ Given the extensive design of MUI regulation of financial services, my concern is whether MUI then expands this authority into other fields of Islamic law, and if so, why and how does it do that?

The role of MUI in deciding to frame corporate zakat as a mandatory duty enforceable by the Indonesian government is vital because the obligation itself is ambiguous, both in Islamic jurisprudence and Indonesian statutory law. There is no concept of a legal person in classical Islam; thus, zakat's duty only applies to natural persons; so, there is no precedent for applying the duty of zakat to a legal person in classical Islam. Following confirmation of its status in the 1980s by an international zakat forum, a decision was made by the Ijtima Ulama of the All Indonesian *Fatwā* Commission of MUI and Islamic organizations in 2009, requiring the payment of corporate zakat. The Ijtima Ulama is a collective *ijtihād* forum that involves all ulama across Islamic organizations in Indonesia; it is organized biannually by MUI since 2003 to resolve contemporary legal problems faced by Muslims in Indonesia. Why was there a *fatwā* issued by a *Fatwā* Commission (and the *Sharī'a* National Board in the case of Islamic Financial Services), on the one hand, and a resolution issued by Ijtima Ulama on the other? What is their difference? Why has the 2009 Ijtima Ulama's decision on corporate zakat not been promulgated as a *fatwā* by MUI?

This chapter then discusses the methods and procedures for issuing a *fatwā* as employed by the *Fatwā* Commission of MUI and the Ijtima Ulama. Most importantly, it analyzes the responses of ulama on corporate zakat as a new obligation in Islam. Finally, this chapter considers these problems in light of data gathered through interviews with informants involved in the 2009 Ijtima Ulama and documentation of ulama's opinions either in the form of treatises such as book chapters or seminar proceedings.

Overview of MUI's Origin and Development

When and Why Was MUI Instituted?

MUI was officially established during the First National Conference of the All Indonesian Ulama Councils on July 21–27, 1975. From the literature, we know that its bylaws were signed by the assembly, comprising 53 leading ulama of Indonesia and a local MUI board on July 26, 1975. On July 27, 1975, the final conference day was attended by the Board of Directors for 1975–1980, which the Minister of Religion inaugurated.⁴

The narrative history of MUI mentions that aspiration for establishing a forum for all ulama across Islamic organizations came from both government and Islamic organizations. First, for example, the All Indonesian Ulama Conference (*Musyawaharah Alim Ulama se-Indonesia*) on September 30, 1970, in Jakarta was organized by the Center for Indonesian Islamic Propagation (*Pusat Dakwah Islam Indonesia*). At this event, many ulama suggested establishing an ulama council that would have a *fatwā* body. The Minister of Religious Affairs set up the Center itself. The idea came from Ibrahim Hosen's paper quoting the decision of the *Majmā' al-Buhūth al-Islāmiyya* in Cairo in 1964 on the need for and significance of practicing

collective *ijtihad*. Haji Abdul Malik Karim Amrullah, a.k.a Hamka (d. 1981),⁵ the (then) first general secretary of the Center, rejected the idea on the same occasion, especially on inviting secular scholars to get involved in the practice of collective *ijtihad*. He recommended that President Suharto appoint a *mufti* who would advise the government and Muslim communities instead. The conference only recommended that the Center reviews the possibility, but this recommendation went unnoticed for about four years.⁶

Another critical historical event was a workshop for Islamic preachers (*mubāligh*) on November 26–29, 1974. The workshop produced a consensus to establish an ulama council to guide Muslims' participation in national development. The consensus was reached because of President Suharto's strong suggestion, who saw the need for a nationwide ulama body to represent Muslims in interreligious forums and organizations.⁷ However, the consensus meant that the ulama council's format was left to each region's discretion according to their local conditions. President Suharto further supported this consensus during the closing ceremony, who made the case that some ulama and religious leaders' forums were needed to advance national development. Thus, the President urged that ulama and religious leaders' forums be instituted to comprise religious leaders from the various religious groups in Indonesia. This way, they would cooperate to foster harmony, mutual understanding, and respect among religious adherents in Indonesia.⁸

On May 24, 1975, at the Council of Indonesian Mosques (*Dewan Masjid Indonesia*, DMI), President Suharto again stated his aspiration to develop the Indonesian ulama council. Efforts to establish ulama councils in the regions where they had been set up were intensified under the Minister of Internal Affairs instruction. By May 1975, the Council of Indonesian Ulama's local offices was established by the Minister's directive at the provincial and Indonesia's district levels.⁹ Meanwhile, a committee of the First National Conference of the All Indonesian Ulama Council mentioned above was set up by the President's directive to prepare its establishment for the central office.¹⁰

Thus, the birth of MUI can be said as the result of both ulama's and the government's awareness of the need for a specific forum for ulama across Islamic organizations. As per its bylaws, MUI functions to advise both the government and Muslim community on religious matters or problems faced by the nation in general, using a *fatwā* and *tawsiyya* (admonition). It also encourages unity among Muslims, to mediate relationships between government and ulama, to represent Muslims in interreligious forums. In addition, Hasan Basri, the third general chairman, classified MUI's function as a watchdog for government policy, making sure that laws in Indonesia do not contradict Islam's teachings.¹¹

The function of MUI was meant to be purely consultative. Therefore, it was not allowed to become involved in practical programs such as running schools or mosques or participating in politics. The government imposed

these limitations on Suharto's speech during the first national conference of ulama in 1975. However, Hamka stated it was ulama themselves who proposed the limitations to avoid a rivalry with the government.¹²

Over time, however, it turns out that both government and ulama have political motives in establishing MUI. First, the government used MUI to justify its public policy related to Islam. Hooker, in his study on MUI's *fatāwā* from 1975 to the early 1990s, argues that the primary function of MUI was to support and, in some cases, justify government policies and programs.¹³ Some *fatāwā*, such as the permissibility of breeding frogs and rabbits for food, are controversial, and some Muslims claim that the government used MUI to legitimize its policies rather than acting for the common good.¹⁴

On the other hand, ulama used MUI to influence the government's public policy not to be contradictory to Islamic teachings but relatively accommodative to Muslim interests. Hamka was known for being critical of the New Order regime for Indonesia's Muslim interests. Nevertheless, he finally assumed the position of MUI General Chairman. He argued that Muslims should cooperate with Suharto's government since it was anti-Communist and that MUI could improve relations between the government and Muslims.¹⁵ The ulama were aware that it would be hard to safeguard Muslims' interests unless they cooperated with the regime.

As a nongovernmental organization, the birth of MUI was made possible by government approval.¹⁶ During the first decade of Suharto's New Order regime, it was established, which was notoriously antagonistic to Islamic politics. It also continued to receive funding from the state through the Ministry of Religious Affairs.¹⁷ This fact might have contributed to the public perception that MUI was no more than a stamp for government policy, especially in Indonesia's first two decades of its existence. Likewise, the vast authority it presumably enjoys is now deemed a "gift" from the government and not because of the ulama's epistemic capability. The following discussion regarding MUI's authority's development will reveal that this public perception is no longer tenable.

How Was the Quasi-Legislative Power Accrued?

Although the government initiated its establishment, MUI is not necessarily controlled by the government and does not always support the government's law and policies affecting Muslims in Indonesia. Mudzhar found that the majority of *fatāwā* issued from 1975 to 1988 (eleven *fatāwā*) were neutral and in some cases were in opposition to government policies, for example, the prohibition on Muslims attending Christmas celebrations. Only eight *fatāwā* were supportive of government policies.¹⁸ Hooker, too, found that there were *fatāwā* from the 1960s and 1970s which say that it is obligatory (*wājib*) for Muslims to vote for Islamic political parties; this is not acceptable to the government in contemporary Indonesia.¹⁹

The shift in Indonesian politics from an authoritarian regime to a more democratic state in 1998 has also brought about MUI changes. Ichwan argues that MUI started to play a political role using *fatāwā* and especially *tawsiyya* (admonition). The shift gave increased independence to MUI, making MUI participate in debates about Islam's role in Indonesia. For example, it supported the legality of Habibie's appointment to the presidency, which was criticized as unconstitutional because Habibie was deemed to be a representative of Islamic-oriented politics. It also issued a series of three admonitions that called for Muslim participation in the general election, specifically to vote for parties that uphold the Muslim community's aspirations and interests, nation and state, and withholding votes from non-Muslim political leaders and parties dominated by non-Muslims.²⁰ Subsequent studies, including Nasir's and Asnawi's,²¹ and Gillespie's,²² also found a similar pattern and argued that MUI has become more independent from the state in the aftermath of Suharto's new order regime's hegemony.

The shift in Indonesian politics also redefined MUI's position from being state-oriented to being Muslim community-oriented. This new orientation was characterized by Ali Yafie, MUI's General Chairman 1990–2000, as a movement “from the state to the people.”²³ MUI tried to get a broader reception among Indonesian Muslims by introducing the concept of the “big tent,” a sort of clearinghouse for all Muslim organizations in Indonesia, including the hard-line groups. Every member should have theological platforms and directions similar to that of MUI, that is, *Sunnī* Islam. Hence, there is no room for both *Salafi* and liberal Muslim groups in MUI.²⁴ According to Mudzhar, MUI's basic attitudes in dealing with the government, the Muslim community, and other religious groups in Indonesia are reflected in their *fatāwā*; namely, the desire to maintain good relationships with the government,²⁵ the preoccupation with the threat of Christianization,²⁶ and the desire to be accepted by Muslim organizations and the Muslim masses.²⁷

With its new greater independence and “inclusive” orientation, MUI has now been deemed the most authoritative Muslim institution in Indonesia in the sphere of *fatwā* production. For example, Hosen maintains that the government tends to defer or use only MUI's opinions since it could represent all Islamic organizations. However, it also considered opinions from other Islamic organizations.²⁸ Hasyim argues that this is evident in the last ten years as other *fatwā* commissions of Muslim organizations belonging to NU and Muhammadiyah have not been prolific in issuing *fatāwā*. They both tend to hand their authority to issue a *fatwā* to MUI. They issue fewer *fatāwā* than MUI, and they will not publish a *fatwā* that MUI's *Fatwā* Commission has released.²⁹

However, the studies above focus on the production of *fatwā* in MUI and its influence on Indonesia's Muslim thought. Ichwan, Hosen,³⁰ Gillespie, Nasir and Asnawi, Hasyim, and Sirry³¹ look at the *fatāwā* as a means by which MUI maintained its role in a rapidly changing political and religious environment. Gillespie and Olle³² also note MUI's increasingly conservative

views on moral and social issues and its hostility toward unorthodox minority Islamic groups. However, the phenomena of MUI's expanded influence and authority in the aftermath of the New Order regime's demise were unexplored until Lindsey published his study in 2012.

According to Lindsey, it is the regulatory changes since Suharto's fall in 1998 that have the expanded MUI's formal role in the state system for the administration of Islamic legal tradition. President Yudhoyono's commitment to placing MUI in a central role in the Islamic faith matters has made this possible.³³ Like Suharto, Yudhoyono was keen for MUI to maintain its semi-official, quasi-state, central role as a religious "watchdog." However, in contrast to Suharto, Yudhoyono saw MUI as a means by which ulama could influence and guide the state. He, therefore, actively encouraged MUI to issue *fatāwā* that he would consider as a policy or even as a type of *de facto* law on Islamic issues that could guide state organs.³⁴ These changes have intensified MUI's influence and the legal authority of its *fatāwā*. MUI thus has been granted new institutional roles by the state, even monopolies in some cases, when it comes to *ḥalāl* certification, Islamic finance, and the *hajj* pilgrimage. As a result, MUI has now begun to accrue quasi-legislative powers resembling those enjoyed by state ulama councils and state *mufī* elsewhere in Southeast Asia but not previously available to any modern Indonesian *fatwā*-producing body.³⁵

Lindsey admits he did not study how the quasi-legislative power is exercised by MUI, primarily through its *Fatwā* Commission (hereinafter the KF-MUI). This chapter extends Lindsey's findings by examining the KF-MUI policy to make itself the single-player for Indonesia's *fatwā* production, administratively and substantively. My argument here is that along with adopting the "big tent" approach outlined above, MUI seeks to intensify further the acceptance of its *fatāwā* among Muslim communities in Indonesia so that there is legal determinacy in answer to the questions posed for resolution. MUI engages with as many *fatwā* commissions and Islamic organizations as possible in the *fatwā* production. For this purpose, MUI organizes the biannual collective *ijithād* forum called Ijtima Ulama, where they seek to resolve Indonesian Muslims' contemporary problems. In exercising and maintaining its status as the most authoritative institution for *fatwā* production, the KF-MUI thus acts as the "reviewer" of the Ijtima Ulama resolutions before promulgating them a *fatwā*. Some Ijtima Ulama resolutions that do not pass the review cannot or are not promulgated as a *fatwā*, such as the case of corporate zakat's obligation in Islamic law.

The *Fatāwā* of MUI and the State Legislative Agenda

Authority in Fatwā Production: Epistemic Authority or New Institutional Role?

A *fatwā* is formal advice from an authority on the point of Islamic law or dogma. A *fatwā* is given to respond to a question that has not been

addressed by *sharīʿa* or where there is no clear answer based on *sharīʿa*. It is usually a reiteration of a famous opinion in the books of *fiqh* but may also respond to legal matters generated by unknown circumstances. *Fatāwā* are used as a mechanism in Islam to meet social and legal changes; this is the most crucial role of a *fatwā*.³⁶ The history of the *fatwā* dates back to the 10th century when the need to interpret God's Law (*sharīʿa*) emerged due to changing circumstances when the revelation was complete with the Prophet Muhammad's death.

Interpreting the *sharīʿa* is considered to be the role of jurists. In the history of Islamic jurisprudence, the development of doctrine and Islamic law methods carried out by Muslim jurists led to Islamic schools' birth or guilds of law (Ar. *madhhab*; pl. *madhāhib*). There were hundreds of *madhāhib* which finally crystalized into four schools of Islamic law in Sunni Islam: Ḥanafīyya, Mālikīyya, Shāfiʿīyya, and Ḥanābila. After these four Islamic schools were established around the 10th century, a consensus formed that limited the authority to interpret Islamic law to jurists associated with one of the four *madhāhib*. A jurist must undergo training in the *madhhab*'s specified *fiqh* literature under a recognized scholar's supervision to be a member of one of these existing guilds. In addition, one must undertake training in the method of interpretation adopted by the *madhhab* and study its standard *fiqh* texts. Once a candidate has completed training and is accepted into the guild, his achievement would be recognized in the form of a license (*ijāza*) to transmit and further elaborate upon legal rulings consistent with the established doctrines of the *madhhab*.³⁷

The acceptance of a *fatwā* by users depends on the jurist's authority who issues it (*al-ijāza li-l-iftā*). Authority was acquired through general acceptance by a known circle of eminent jurists. For a jurist to receive general acceptance, he must show the qualities required, such as mastery of the Islamic legal theory (*uṣūl al-fiqh*), the exegesis of Qurʾān and Ḥādith science, and Arabic, so that he can deduce the rules from the major sources of *sharīʿa* and Islamic jurisprudence.³⁸ In other words, the jurists' authority to interpret Islamic law after establishing the Islamic school of laws is acquired because of his association with the *madhhab*, which has continued from the premodern period to the 20th century.³⁹

The established mechanism for Islamic jurisprudence management across the Muslim world has broken down in the modern period. Western colonialization of Muslim countries has caused this resulting replacement of the *sharīʿa* with western codes, although less comprehensively in family law. Classically trained jurists are no longer considered the only authoritative interpreters of *sharīʿa* and their *madhhab* doctrines. The appropriateness of traditional methods is also questioned in the modern world. Thus, the agreement outlined above regarding the authority of jurists collapses.⁴⁰ It is evident in Muslim countries that gain their independence and want to Islamize their laws; instead of promulgating the *fiqh* as the land law, the state gives its organs the authority (the legislature, the courts, or ministries). These state organs often do not apply Islamic legal theories when drafting

the law, as in Indonesia's case (see details on [Chapters 2 and 4](#)). However, each Muslim-majority country is different in its application of *sharī'a* principles and its use of *fiqh*.

Muslim countries have therefore experienced a rupture of Islamic authority because we have two competing authorities: on the one hand, traditional Muslim jurists who hold the authority in interpreting *sharī'a*, and, on the other, the state which holds the authority to promulgate Islamic law (legislation/codification or *qanūn*). This authority conflict is partly solved with *siyāsa shar'īyya*, where ulama and the government create and share Islamic law vision.⁴¹ Some Muslim countries institutionalize *siyāsa shar'īyya*: The Grand Muftī in Egypt (the *Dār al-Iftā*), for example, is a government agency established in 1895. On important issues, issuing an official *fatwā* is taken care of by the *Muftī Shaykh*, while more routine *fatāwā* are handled by dozens of subordinate *muftī*, via the phone and internet. In Saudi Arabia, this office is called the Permanent Committee for Islamic Research and *Fatāwā*, established in 1971, whose primary function is to issue *fatāwā*.⁴² Muslim countries, which do not institutionalize *siyāsa shar'īyya* or have no clause stipulating "*sharī'a* as a or the source of law" in their constitution, are deemed to have replaced the old structure of *sharī'a* authority with new legal institutions. Muslims seem to trust the new legal institution more than the old structures of *sharī'a* authority in law and governance. Officeholders mostly make critical legal decisions of the state instead of ulama.⁴³ Scrutiny of the legislative and regulatory process in particular Islamic countries may reveal different conclusions, especially on how ulama's opinions (*fatwā* and admonition) are considered in formulating public policy by the government.

In Indonesia, a *fatwā* was issued by individual ulama until the beginning of the 20th century. Before this, Indonesian Muslims often sought a *fatwā* from ulama in the Middle East. When Islamic mass organizations emerged in the second quarter of the 20th century, those organizations' ulama had begun issued some *fatāwā*. Since then, a *fatwā* has been given collectively by councils independent of the state and appointed by Islamic organizations.⁴⁴ The most significant of these councils are MUI, Persis, Nahdlatul Ulama, and Muhammadiyah. Nahdlatul Ulama was established in 1926 and started issuing *fatāwā* as early as its first congress in 1926 through the process called *baḥthu-l-masā'il*. Muhammadiyah was established in 1912 and began issuing *fatāwā* in 1927 following the institution of a special committee assigned to deal with religious issues in general and Islamic law in particular, called *majlis tarjih*.⁴⁵ These two organizations are often the most prominent Muslim organizations globally, but as discussed earlier, MUI has become the most authoritative Muslim institution in producing *fatāwā* in Indonesia over the last ten years. *Fatāwā* or *tawsiyya* have been sought from MUI by individuals as well as both government and nongovernmental agencies.

Since its establishment in 1975, Adams found that MUI has played an active role in legislative and regulatory rule-making to ensure that Indonesia's law and regulation are not contradictory to *sharī'a*, using *fatwā*

or *tawsiyya* issuance.⁴⁶ Long before the *Sharīʿa* National Board was instituted in 1999, the formal role of MUI in assuring *sharīʿa* compliance of law and regulation had been institutionalized in the form of its inclusion in the Ministry of Health's Advisory Board for Health and *Sharīʿa*. The Board consists of the Ministry of Health, medical experts, and ulama (mostly are from MUI) and is responsible for advising the Ministry in matters where medical and religious concerns could collide.⁴⁷ After the promulgation of Law No. 23 of 1992 concerning Health, the Advisory Board for Health and *Sharīʿa* was transformed into National Health Advisory Body and was set up using Presidential Decree No. 12 of 1994. The membership was extended to include other expertise, such as sociologists and economists, but the new body still comprises ulama. In 1994, three MUI members were appointed to the National Health Advisory Body.⁴⁸

When the *Sharīʿa* National Board was instituted in 1999, the authority of its *fatāwā* received *de facto* recognition by the government although the legal basis for this recognition, that is, Law No. 21 of 2008 concerning *Sharīʿa* Banking, was not enacted until 2008. Nafis found that 63 out of 65 of the *Sharīʿa* National Board's *fatāwā* (96.92%) had been absorbed into the Central Bank's and Ministry of Finance's regulations from 2000 to 2007.⁴⁹ The Board issued a *fatwā* based on requests from the regulator of Islamic finance in Indonesia. For example, art. 31 of the Decree of Central Bank Governor No. 32/34/1999 says that in running their business, Islamic commercial banks are required to refer to the *fatāwā* of the *Sharīʿa* National Board. Article 28 and 29 read that where a *fatwā* has not been issued on a matter, the bank is required to seek approval from the *Sharīʿa* National Board.⁵⁰

The above studies suggest a perception of *fatwā*-seekers that MUI holds Islamic law authority in Indonesia. In the case of corporate zakat obligations, the Board of *Sharīʿa* Accounting Standard of the Association of Indonesian Accountants sought a *fatwā* from MUI (and not other *fatwā* bodies) for this reason. When I asked the (then) technical director of the Association why they had asked MUI, she asked whether any other institutions issue *fatāwā* in Indonesia. Based on her understanding, every product of an Islamic bank must be endorsed by a *fatwā* of the *Sharīʿa* National Board before launch, to maintain its consistency with *sharīʿa*. When asked why not seek a *fatwā* from another institution, she asked whether *the state recognizes fatāwā issued by Nahdlatul Ulama and Muhammadiyah*. She then added:

[Within Islamic banking] *sharīʿa* audit is performed by each bank's *Sharīʿa* Supervisory Board and they are members of MUI too; if the Central Bank seeks *fatāwā* from Nahdlatul Ulama and Muhammadiyah, we might also do that; we never think of that possibility before. The Board of *Sharīʿa* Accounting Standards only issues *Sharīʿa* Accounting Standards, which have a *fatwā* from MUI.⁵¹

Hence, there is arguably a perception among *fatwā*-seekers that MUI is the authoritative body in Indonesia so far as Islamic doctrine matters. Before MUI, there was no unifying body for the Indonesian Islamic authority. The nature of MUI also resembles a forum for the ulama of the various Islamic organizations in Indonesia. Because of its activist role since its establishment, MUI has been deemed the most authoritative ulama forum; thus, it is granted a new institutional role.

Methods and Procedures of Issuing a Fatwā

Within MUI, there are two institutions vested with the authority to produce a *fatwā*: the *Sharīʿa* National Board and the *Fatwā* Commission (see [Figure 3.1](#) below). This section will focus on analyzing the *Fatwā* Commission of MUI (KF-MUI) because it is this institution that will potentially further expand the quasi-state *mufīṭī* role. The KF-MUI is an organ in the MUI organization structure, which is vested in issuing a *fatwā*. The leaders and members of the *Fatwā* Commission are elected periodically by its members. In its first institution in 1975, it comprised seven ulama representatives of Islamic organizations. This number keeps changing with every turnover of the management of the Commission every five years. For example, in 2005–2010, it consisted of as many as 38 ulama, while in 2010–2015, there are 52 ulama. The Commission members include 12 professors whose specializations include Islamic jurisprudence, comparative Islamic jurisprudence, Islamic legal theories, law, the exegesis of Qurʾān, and Ḥadīth, as well as 30 PhDs from various disciplines in Islamic studies. Women are also better represented in this *Fatwā* Commission period because four sits as members. The prominent woman figure in the *Fatwā* Commission is Huzaimah T. Yanggo (see [Chapter 2](#) for details on her role in maintaining the orthodoxy of Islamic marriage law in Indonesia).⁵²

The *Fatwā* Commission schedules commission meetings to deliberate and issue a *fatwā* which is attended by its members, the Chief of the regional MUI, and experts on the subject matter, for example, medical doctors, biotechnologists, and so forth, if necessary. A meeting must be held if a request or demand is considered necessary or significant enough to issue a *fatwā* from the community, government, or social institutions. MUI itself can initiate this process to respond to specific problems. A *fatwā* can be issued in one session or multiple sessions, depending on the problems' complexity. Issues with much public attention are usually complicated to conclude and need to be done in several sittings, for example, *fatāwā* on smoking prohibitions, Ahmadiyah, terrorism, and pluralism. Meanwhile, *fatāwā* on vasectomy, tubectomy, and cornea donation were issued in one session.⁵³

Since 2003, the *Fatwā* Commission has adopted guidance and procedure about *fatwā* promulgation. It is part of the decisions made by the first Ijtima Ulama in Jakarta in 2003. However, some requirements must be met for issuing a *fatwā*. First, it must fulfill the methodology (*minhāj*) because

issuing a *fatwā* simply to meet some social or private need (*hāja*), public interest (*maṣlaḥa*), or objectives of *sharīʿa* (*maqāṣid al-sharīʿa*) without taking into account the religious texts (the Qurʾān and Ḥadīth) may lead to arbitrary rulings and abuse. On the other hand, holding on to the religious texts rigidly without considering the public interest and objectives of *sharīʿa* constitutes a reckless approach.⁵⁴ Thus, in promulgating a *fatwā*, MUI prioritizes the Qurʾān, Ḥadīth, *ijmāʿ*, *qiyās*, and other legal reasoning methods in Islamic legal theory, that is, *istiḥsān* (juristic preference), *maṣlaḥa mursala* (considerations of public interest), or *sadd al-dharīʿa* (blocking means).⁵⁵

There are three approaches employed by the *Fatwā* Commission: (1) *Naṣṣ qatʿī* approach, (2) *Qawlī* approach, and (3) *Minhājī* approach. The *naṣṣ qatʿī* is referring to the Qurʾān and Ḥadīth if both present the answer for the questions raised. If the answer is not available, the jurists employ the *qawlī* approach first. If this is not sufficient, they deploy the *minhājī* approach. The first approach is made by referring to classical jurists' opinions documented in classical Islamic jurisprudence books. If there are conflicting opinions from classical jurists, the *Fatwā* Commission will first try to reconcile the opinions (*al-jamʿu wa-l-tawfīq*). If this step fails, the Commission will choose the most reasoned opinion using a comparative method in Islamic legal theory (*fiqh al-muqārana*). If the opinion is not relevant anymore because its impracticality or the effective cause (*illa*) of a ruling has changed, it will be reviewed. When there is no single opinion on the subject matter raised in the books of *fiqh*, the Commission then apply the *minhājī* approach, the process of promulgating *fatwā* using canons of interpretation (*al-qawāʿid al-uṣūliyya*) and proofs of *sharīʿa* (*dalīl sharʿī*) developed by classical jurists including *qiyās*, *maṣlaḥa mursala*, and *sadd al-dharīʿa*.⁵⁶

In practice, however, the methods above are not followed consistently. This fact criticizes the *Fatwā* Commission's members' epistemic quality and their *fatāwā* by scholars such as Mudzhar and Hosen. Having examined the methodology employed by MUI in its *fatāwā* 1975–1998, Hosen argues that the members of the *Fatwā* Commission did not reach the level of independent *mujtahid* (see Chapter 2) given the practice of collective *ijtihād* adopted by MUI. Its *fatāwā* mostly reiterated classical *fiqh* books without modification or with just slight changes due to the absence of a methodology for deriving legal opinions which is consistent with the spirit of Qurʾān and Sunna and Islamic legal tradition as well as able to meet rapid social changes in Indonesia. MUI faced a tense situation in attempting to satisfy both society and government. Therefore, it tried to give answers carefully by balancing competing opinions, methods, and arguments found in classical Islamic jurisprudence (*fiqh*) in order to assist Muslims with legal questions when the Qurʾān and Ḥadīth are silent.⁵⁷

Mudzhar, who examined the methodological formulation of MUI's *fatāwā* 1975–1988, concludes that the process did not follow a consistent pattern. Some began with arguments of the Qurʾān before citing relevant Ḥadīth and referring to *fiqh* texts; others directly examined the available

fiqh texts and established analogies to the question being discussed without prior examination of relevant verses of the Qurʾān or Ḥadīth. A few *fatāwā* did not present any arguments, either textual or rational; they were pronounced. However, MUI believes that a *fatwā* may only be issued after an exhaustive examination of the four sources of Islamic law: Qurʾān, Ḥadīth, *ijmāʿ* (scholarly consensus), and *qiyās* (analogy), the authoritative order of which is according to the Shāfiʿī School of law. In practice, however, that methodological procedure is not always followed.⁵⁸

To deal with the question of epistemic quality, the *Fatwā* Commission (as well as all *fatāwā* issuance bodies in Indonesia) implements collective *ijtihād*, instead of individual *ijtihād*. The lack of epistemic authority, I argue, correlates with the practice of collective *ijtihād* because individual expertise, for example, the exegesis of Qurʾān, Ḥadīth, Islamic legal theory (*uṣūl al-fiqh*), or Islamic jurisprudence (*fiqh*), can support each other's arguments during *fatwā* deliberation. The collective *ijtihād* practice even makes other experts' involvement, such as medical doctors, biologists, or economists, possible besides those specializing in Islamic disciplines. Their involvement is now considered vital in order to yield a *fatwā* that is relevant to contemporary life.⁵⁹

Some contemporary Muslim jurists support the practice due to the lack of contemporary ulama qualification to perform *ijtihād*. The forum of leading ulama of Islamic countries (*Majmāʿ al-Buhūth al-Islāmiyya*) in its first conference in 1964 issued the following decision:

The procedure to maintain the *maṣlaḥa* (benefit) when facing new cases or problems is to choose laws from the schools of Islamic law which are suitable for that case; if there is still no answer by doing this, then *al-ijtihād al-jamāʿī al-madhabī* (collective *ijtihād* within the school) is performed; and if this way is also not enough (to solve the problems), then *al-ijtihād al-jamāʿī al-muṭlāq* (absolute collective *ijtihād*) is performed.⁶⁰

Likewise, Yusuf al-Qaradawi, one of the most prominent contemporary ulama in the Islamic world, said that “the *ijtihād* that we need in our era is *al-ijtihād al-jamāʿī* [collective *ijtihād*].”⁶¹

MUI considers that anyone who can perform *ijtihād* is eligible to do so. If classical jurists underwent rigorous training in a *madhhab* before being granted the authority to do *ijtihād*, MUI acknowledges that educational background and training in *sharīʿa*. Thus, the *Fatwā* Commission members are drawn from various institutions, ranging from graduates of traditional Islamic colleges or boarding schools (*pesantren*), Middle Eastern tertiary education institutions (e.g., al-Azhar University and Ummul Quro Medina) to *sharīʿa* law schools of Indonesia's national Islamic universities.⁶² Some members of the *Fatwā* Commission worked or apprenticed before assuming the position in the *Fatwā* Commission (e.g., Asrorun Niʿam Sholeh and Hasanuddin). In the case of Hasanuddin, he was brought to MUI by the late

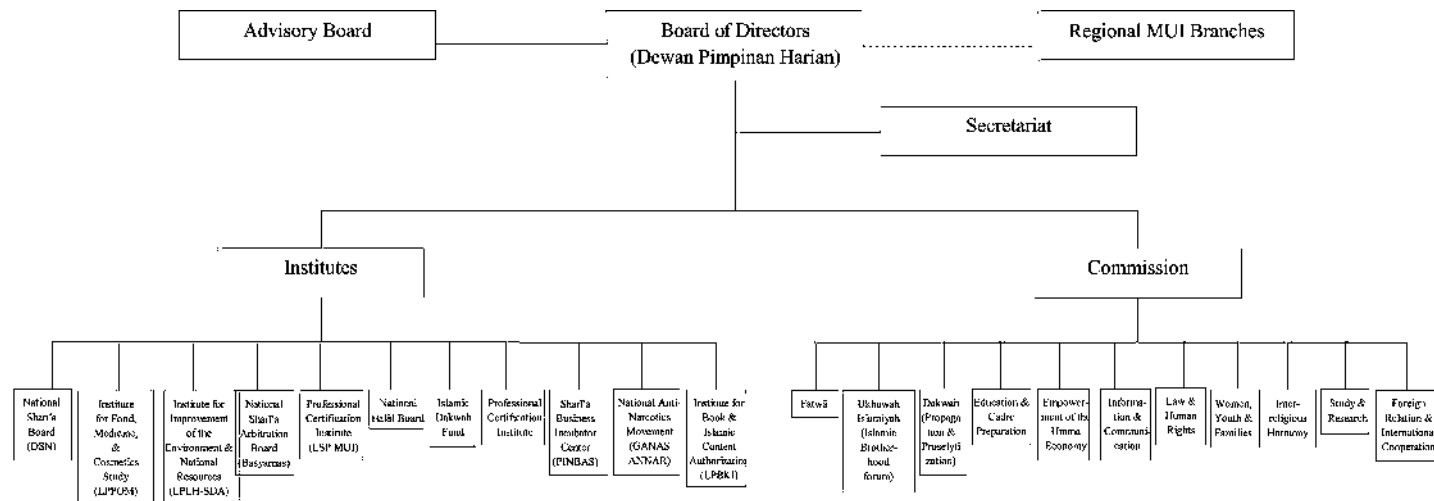


Figure 3.1 The Structure of MUI at the National Level

Source: MUI Board of Directors <www.mui.or.id/kepengurusan-MUI/>; Decree of MUI Board of Director Nomor: Kep-144/DP-MUI/XII/2020 Concerning Composition and Personnel of the MUI Commissions and Institutes 2020–2025 <www.mui.or.id/pages-2/>.

chairman Ibrahim Hosen. Hasanuddin lectured at the Institute for Qur'ānic Studies, where Hosen was the rector; he was also the personal secretary to Hosen. Hasanuddin said that Hosen might personally know his capacity and train him as a junior jurist at MUI.⁶³ In this respect, the Chairmen of MUI act like an “eminent circle of jurists” to invite potential young intellectuals to be prepared as ulama/jurists in Indonesia.

In addition to educational background and personal competence (sufficient knowledge of Islamic law), the representative aspect of the *Fatwā* Commission's members from various Islamic organizations must also be taken into account. According to Ni'am, this highly diverse background has enriched the *fatwā* deliberations in the Commission since each member will bring his/her readings into the discussion.⁶⁴ Moreover, this diversity increases the widespread *fatāwā* acceptance, given that all Islamic organizations are represented in the Commission. Thus, the intention is to mitigate resistance to a given *fatwā*, for example, because one's doctrine is not accommodated in the *Fatwā* Commission.⁶⁵

How Does the Fatwā Commission of MUI Exercise Its Quasi-Legislative Power?

Since 2003, MUI has organized an inclusive collective *ijtihād* forum through an Ijtima Ulama of all the *Fatwā* Commission and all Islamic *Ormas* (*Organisasi Masyarakat*), that is, Islamic social organizations, especially those which have *fatwā* institutions in their organizational structure. MUI does this to increase the efficacy of *fatāwā* issued on legal matters.⁶⁶

Of around 26 decisions of 3 Ijtima Ulama (those held in 2003, 2006, and 2009),⁶⁷ only 5 decisions have been promulgated as *fatāwā* of the *Fatwā* Commission. They concern (1) bank interest; (2) the determination of the first day of the Islamic Lunar months of *Ramaḍān*, *Shawwāl*, and *Dhulhijja*, (3) terrorism;⁶⁸ (4) short message service (SMS) prizes; and (5) unregistered marriage.⁶⁹ Of these five *fatāwā*, four were promulgated in a single general meeting of the Commission, while the *fatwā* concerning bank interest was promulgated after three sessions. Most *fatāwā* promulgated from the decisions confirm the rulings adopted by the Ijtima Ulama but with various redactions. Details on how the Commission has treated the Ijtima Ulama's decisions up to the publication of MUI's *fatwā* compilation in 2011 can be seen in Annex I.

The rest of the decisions of the Ijtima Ulama have not been promulgated for the following reasons: *first*, they needed further study by the *Fatwā* Commission (e.g., in the case of corporate zakat); *second*, the *Fatwā* Commission had issued *fatwā* earlier on a similar subject matter, or it issued a *fatwā* afterward without referring to the decision of the Ijtima Ulama, although the *fatwā* has a similar subject matter to the decision; *third*, the *fatāwā* are more like non-*fatwā* documents because of lacks of normative points (although some admonitions from earlier records in MUI history

were promulgated as *fatwā*). The *Fatwā* Commission of MUI (KF-MUI) is the institution given the authority to promulgate the *fatwā* within the MUI organization structure. Administratively, KF-MUI is mandated to promulgate MUI *fatāwā* following a standard format that resembles statutory regulations. For *fatāwā* related to the *sharī'a* economy, the mandate is given to the MUI National *Sharia* Council (DSN-MUI). Other MUI's institutions only issue non-*fatwā* documents such as *tausiyah* (general opinions or recommendations), *tadzkirah* (admonitions), *amanat* (instructions), *pernyataan sikap* (position statements), *himbauan* (appeals), and *sumbangan pemikiran* (contributions to thought).⁷⁰ One of the MUI institutions that frequently issues non-*fatwā* documents is the Ukhuwah Islamiyah Forum (see Figure 3.1 above). After Suharto's resignation as president in 1998, hardline Islamic groups, such as MMI, HTI, and FPI, have become part of the Ukhuwah Islamiyah Forum.⁷¹ This factor makes non-*fatwā* documents such as MUI's *tausiyah* impact national politics because they have loyal followers who will carry it out even though it is not a *fatwā*.⁷²

The *fourth* reason is time constraints on the deliberation meeting given the *Fatwā* Commission members' busy schedules. Most *Fatwā* Commission members hold permanent positions and occupations outside MUI, and a member likely assumes multiple jobs and positions in their workplace and social organizations. Hasanuddin, for example, is a tenured lecturer at UIN (State Islamic University) Jakarta, secretary of the *Fatwā* Commission, a member of the *Sharī'a* National Board of MUI, a member of the National *Sharī'a* Accounting Standards Board, and *Sharī'a* Advisory Board in several Islamic financial institutions. Asrorun Ni'am Sholeh is a tenured lecturer at UIN Jakarta, Commissioner of Indonesia's Child Protection Commission, a *Fatwā* Commission member, and *Sharī'a* Advisory Board in several Islamic financial institutions. This situation is also actual for the rest of the *Fatwā* Commission members, especially those who also sit in the *Sharī'a* National Board. In addition, there is a tendency among Islamic financial institutions in Indonesia to use ulama connected with MUI and their perceived authority of Islamic law in Indonesia by appointing them as *sharī'a* supervisors of their banks or insurance companies.

Resolution on Corporate Zakat and MUI's Authority in Indonesia

The role of MUI in deciding to frame corporate zakat as a mandatory duty enforceable by the Indonesian government is vital because the obligation itself is ambiguous Islamic jurisprudence. There are differences of opinion about the status of corporate zakat obligation. The obligation of zakat is traditionally and historically applied to Muslim individuals who meet specific requirements, namely, being a Muslim, having reached puberty, good mental health, possession of the minimum threshold or *niṣāb*, and one year of ownership or *ḥawl*.⁷³ Several contemporary ulama of *fiqh* had written on

corporate zakat when discussing zakat's obligation on companies' stocks and bonds. These ulama include such figures as the Abdurrahman Isa and Abu Zahrah. Abu Zahrah, Abdurrahman Hassan, and Abdul Wahab Khallaf specify that the company is required to pay zakat from profits earned before it is distributed to shareholders, while shareholders are also required to issue zakat of their shares (including part of the dividends earned).⁷⁴ Yusuf al-Qaradawi considers this provision contrary to Islamic principles, prohibiting zakat's imposition twice against the same property type (double zakat). He argues that only one of the two zakat on a company or a stock/bond is applicable.⁷⁵

There was an attempt to reconcile this difference of opinion through forums involving ulama. In 1984, the First International Conference on Zakat in Kuwait decided that corporate zakat is mandatory if it satisfies the following four provisions: the presence of provisions of governing laws, the company's bylaws stipulate it, the annual general meeting of shareholders decided it, and the approval of company's shareholders is given to pay zakat on their behalf. The Academy of Islamic *Fiqh* of the Organization of the Islamic Conference (OIC) issued a resolution from the fourth conference in Jeddah in 1988 that shareholders must pay zakat on their shares; a company will calculate and pay zakat behalf of the shareholders if it meets the four conditions above. The company must also issue zakat on their assets; if the company does not do so, the shareholders must pay zakat on their shares.

Despite the two *fatāwā* above, ulama in Indonesia still have different opinions about the corporate zakat obligation status. The idea of corporate zakat became part of public discourse for the first time in Indonesia during the First All Indonesian Zakat and Islamic Charity Agency National Meeting, March 2–4, 1992. The keynote speaker was Dawam Rahardjo, a Muslim scholar pioneering Islamic economics, who argued that companies and legal entities are not subject to a zakat obligation as they do not observe Islamic formal-rituals (*al-ʿibāda al-mahḍa*) such as *ṣalāt* (the five daily prayers), *ṣawm* (fasting), or zakat.⁷⁶ Among the discussants were ulama, such as Ahmad Azhar Basyir of Muhammadiyah and Mochamad Ilyas Ruchiyat of Nahdhatul Ulama, who did not assert their opinions.⁷⁷ The National Meeting recommended establishing zakat and Islamic charity agency task force to work with companies and not collect corporate zakat.⁷⁸

The polemic on corporate zakat status as an obligation in Islam continued, especially after the Zakat Management Law (No. 38 of 1999). The pro lobby gained momentum to disseminate their opinion on corporate zakat's obligation thanks to a series of seminars on corporate zakat organized by nongovernmental zakat agencies, especially Dompot Dhuafa, and later co-organized by the National Zakat Collector Agency or BAZNAS. Both state and nonstate zakat agencies were supporters of clarifying its legal status because of its potency as a source of social development funds if it were to be mandated. The purpose of the seminars was to socialize the concept of corporate zakat and discuss its tax treatment. Ulama were involved in (and

arguably utilized by) the seminars to deliver papers. They always endorsed the concept of a corporate zakat duty. Didin Hafidhuddin is one of the ulama who was heavily involved in disseminating the idea that corporate zakat is a new Islam mandate.

While with fewer channels and less coverage, the con group also disseminated their opinion. Amir Syarifuddin can be regarded as the most consistent opponent of a corporate zakat obligation. Before the Ijtima Ulama of 2009, he had asserted his opinion in a bit of discussion about corporate zakat status held by BAZNAS in Jakarta's headquarters. Other ulama opinions in this group are documented in Indonesia's book of zakat development by Noor Aflah, which specifically dedicates a chapter discussing corporate zakat.⁷⁹

Given the debate about the corporate zakat status, the question of whether a legal entity such as a corporation is required to pay zakat finally became one of the agenda items for resolution by MUI in 2009. As a result, during the Third Ijtima Ulama of the All-Indonesian KF-MUI and *Ormas* Islam, it was decided that corporate zakat is mandatory with the condition that a company that has been qualified as a zakat payer is obliged to pay zakat, either as a legal person (*shakhshiyya i'tibariyya*) or as a representative of the shareholders.⁸⁰

The Qur'ān and Ḥadīth do not specifically mention legal entities as being subject to zakat. Corporate zakat status thus is a matter of *ijtihād* in Islam. As a result, both groups employ proofs of *sharī'a* either from the primary sources (the Qur'ān, Ḥadīth, *ijmā'*, and *qiyās*) or minor sources such as *maṣlaḥa mursala* (consideration of public policy) with different emphasis. Suppose the proponents utilize the above proofs of *sharī'a* by prioritizing the texts' spirit to gain a more significant public utility. In that case, the opponents prioritize the distinction in the *sharī'a* between the ritual worship (*'ibāda*) and social transactions (*mu'āmalā*) as well as justice, that is, averting an arbitrary rule for the target group. For example, the proponents' use of Ḥadīth literature stipulating the existence of partnership in Islam is countered by the opponents arguing that the concept of partnership in Islam is incomparable to the modern concept. Classical Islamic commercial jurisprudence (*fiqh al-mu'āmalā*) does not recognize the legal entity protection since its concern is protecting members of partnership; meanwhile, modern commercial law recognizes the right and responsibility of the legal entity as a subject of law. Thus, zakat's obligation to a partnership's wealth lies with each party, not with the partnership.⁸¹ Generally speaking, the concept of a corporation was also completely absent in the premodern Islamic world. What contemporary jurists proposed as the concept of an Islamic legal person (*shakhshiyya i'tibariyya*) is simply the widely accepted western concept of a corporation.⁸² The 2009 Ijtima Ulama decision did refer to R. Subekti – an Indonesian expert in *hukum perdata* or civil law – and his definition of a legal person when framing its argument.⁸³ According to Nyazee, the legal person's concept may be accepted within the fold of Islamic law as long

as some changes are made to the business corporation's existing structure. Unless these adjustments are made in conformity with *sharī'a*, the so-called Islamic corporation would be liable to adopt governance models and business features such as interest-based financing, capital investment, and issuance of securities, which are questionable practices in *sharī'a*.⁸⁴

Similarly, when ulama make an analogy between corporations to the act of trading as a legal basis for their being subject to zakat, they argue that what prompts the obligation of zakat for corporations is their business activities and not being a legal entity per se. However, the corporate zakat proponents obscure this distinction because they do not distinguish between zakat paid by the corporation as an entity and zakat paid by the shareholders or employees in the corporation's name. According to the corporate zakat opponents, the proponents' arguments are erroneous because they mean corporate zakat as zakat paid by the entity. They neglect the fact that jurists require this kind of obligation only if the shareholders do not already pay zakat on their respective shares or the shareholders have delegated the payment of zakat due on their shares to the corporation. Details on these rebuttals can be seen in Table 3.1 below.

Ijtima Ulama's decision of 2009 is not promulgated yet as a *fatwā* by MUI as there are sharp disagreements about the corporate zakat obligation and unresolved discussions on the matter at the level of the KF-MUI. The measure of deferring the promulgation of Ijtima Ulama's decisions, in this case, the corporate zakat duty, confirms this study's thesis that MUI has expanded its authority, asserting itself the most authoritative institution in interpreting Islamic law in Indonesia. This strategy is implemented when KF-MUI assumed the reviewer of Ijtima Ulama's decisions, although the forum was attended by more ulama than those affiliated with the KF-MUI meeting. KF-MUI review the decisions to controls the quality and consistency of MUI *fatāwā* according to the MUI's *fatwā* methodology (*minhāj*). However, MUI has been heavily criticized for problems with the consistency of *fatāwā* and poor *fatāwā* documentation. Also, there is a problem with the communication of *fatāwā* to users because there is no legal basis and considerations for issuing a *fatwā*, only rulings. Meanwhile, MUI aims at not only elevating the acceptance of its *fatāwā* but also improving the quality of *fatāwā* produced. Hence, it needs to adopt methods and approaches in producing *fatāwā* and improving *fatāwā* publication. Unlike previous publications, current publications include the text of the relevant *fatwā* and its background, explanation, and elucidation of each proof of *sharī'a* used.⁹⁵

Regarding the Ijtima Ulama's resolution on corporate zakat, KF-MUI sees the inefficient process of discussing recommendations that will become an MUI's *fatwā*. Based on interviews with some key figures in the corporate zakat session, not all participants came to the forum well prepared.⁹⁶ Working papers developed by the KF-MUI on corporate zakat were sent out only one to two weeks in advance.⁹⁷ Arguments were mainly proposed based on extra-judicial and extra-*sharī'ah* reasoning, not on the religious

Table 3.1 Polemic on the Legal Status of Corporate Zakat Following the Zakat Law of 1999

No.	Proponents	Arguments	Opponents
1	Didin Hafidhuddin <i>Ulama of MUI; Chief of BAZNAS; Sharī'a Adviser to BRIS</i> Source: book chapters ⁸⁵ ; paper seminar, ⁸⁶ interview ⁸⁷	1 The general text of Qur'ān (al-Baqāra: 267, and al-Tawba: 103 on the obligation of zakat of Muslim wealth) 2 Ḥadīth on partnership. From several Ḥadīth on the partnership, he concludes that a business entity has a legal personality subject to zakat's obligation and the owners' or shareholders' obligation to pay zakat individually 3 <i>Ijmā'</i>: First international zakat conference in Kuwait in 1984 and the Zakat Management Law No. 38 of 1999⁸⁸ 4 Reasons (<i>dalīl naqlī</i>): right now, around 40 companies paid their zakat through BAZNAS. If this forum decided no obligation for companies to pay zakat, it would discourage them from paying in the future	1 There are no legal arguments from the Texts, whether general or particular injunctions 2 Subject of law (<i>mukallaḥ</i>) in Islamic law is only human beings, not legal persons 3 The imposition will be a double burden on the Muslim shareholders' property; thus, imposing financial obligations on a human being without justified reasons is illegal and despotic 4 On the use of <i>maṣlaḥa</i>; one must be very careful because <i>maṣlaḥa</i> utilizes much human reason; thus, it is relative; it cannot be used to establish legal liability in worship, especially in purely ritual practice, or <i>'ibāda mahḍa</i> 5 On <i>siyāsa shar'īyya</i>: the government already set up financial obligations in the form of tax. Thus, it will create a double burden on the same subject for the same property Amir Syarifuddin <i>Prof. Sharī'a of IAIN Imam Bonjol Padang, member of the KF-MUI</i> Source: Archive (paper during a limited discussion in BAZNAS); interview; documented opinion⁸⁹

(Continued)

Table 3.1 Polemic on the Legal Status of Corporate Zakat Following the Zakat Law of 1999 (Continued)

No.	Proponents	Arguments	Opponents
2	Surahman Hidayat <i>Executive Director of Shar'fa Consulting Center</i> Source: documented opinion ⁹⁰	1 Zakat Law No. 38/1999 obliges it 2 Spirit of the text: in a company, there is wealth that potentially grows, thus meets the criteria of items subject to zakat 3 The <i>fiqh</i> concept of <i>wakāla</i> (delegation): the shareholders give the company a mandate to pay zakat on their behalf 4 First international zakat conference in Kuwait in 1984 has decided its status as mandatory	1 The Qur'ān and Sunna already mentioned clearly that zakat obligation is imposed on human beings 2 Double zakat on individual property, thus burdensome and unfair 3 The use of <i>shakhṣiyya i'tibāriyya</i> as the argument for corporate zakat duty on companies is erroneous because the Qur'ān and Ḥadīth have set up the rule that zakat obligation is imposed on human beings. The argument will be correct if it is used, for example, to dissolve a company because the court found it already inflicted financial loss on society Ikhwan Abidin Basri <i>Shar'fa Advisory Board of HSBC Amanah, Bank Bukopin Syariah, Deutsche Bank; member of Shar'fa National Board</i> Source: documented opinion⁹¹
3	Moh. Taufik Ridlo <i>Consultant Manager of Indonesia Magnificence Zakat, the think tank of zakat of Dompét Dhuafa</i> Source: book, ⁹² documented opinion ⁹³	1 <i>Fiqh</i> doctrine on <i>shakhṣiyya i'tibāriyya</i>: the law considers them to have a will that its shareholders and management's decision can manifest 2 First international zakat conference	1 We must distinguish between zakat imposed on everyday business activities and business entities. The former is subject to zakat obligation because its legal status is the same as zakat on trade, categorized as one of the items subject to zakat in the classical <i>fiqh</i> 2 Terms and conditions for zakat on everyday business activities, i.e., the minimum threshold (<i>niṣāb</i>) and rate, are similar to zakat on trade 3 Zakat on modern business: if it is a sole proprietorship company, then the obligation of zakat is on the owner; thus, the legal person of the business activity, e.g., a company, is not obliged to pay zakat. If it is a partnership, the obligation of zakat is on the owner of capital (or shareholder in the case of corporations). If the company wants to pay its zakat, then it is the owner's or shareholders' zakat paid in the company's name⁹⁴ Nahar Nahrawi <i>Member of the KF-MUI; Shar'fa Advisory Board of MAA General Assurance, Bank BII, and Shar'fa Credit Union (Kospin Jasa Syariah)</i> Source: seminar paper

Source: Various

texts or books of *fiqh*; the discussion was intense, but vocal speakers in the forum were not necessarily those with the strongest opinions.⁹⁸ For instance, while weighing both arguments, and while the debate was not yet complete, this panel on contemporary issues on zakat matters suddenly decided to state that corporations must pay zakat.⁹⁹ The panel was chaired by Didin Hafidhuddin (the leading proponent). Amir Syarifuddin (the primary opponent) presented his argument on the first day of the panel.¹⁰⁰ He observed that the participants were sharply divided on the issue. Syarifuddin did not attend the panel on the second day because he attended another panel charged with a pressing issue – the ban on smoking. He also perceived that it was impossible to positively or negatively decide on the corporate zakat issue when the deliberation was not complete. Surprisingly, the participants informed him that the panel had decided positively on the issue. He suspects that Hafidhuddin played a role in bringing the panel to such a conclusion, given his activism with BAZNAS in campaigning for the concept of corporate zakat duty. Hafidhuddin himself confirmed that he told the forum that if they decided negatively, it would affect companies' willingness to pay their zakat through BAZNAS and the future corporate payers targeted by BAZNAS.¹⁰¹ Due to this reason, KF-MUI did not adopt the Ijtima Ulama panel decision as there were sharp disagreements about the corporate zakat obligation during the Ijtima Ulama and unresolved discussions on the matter.

Conclusion

In this chapter, we have seen how MUI increasingly showed its independence from state control and asserted itself as the institution to be consulted by the government so far as Islamic law in Indonesia. MUI has been more confident in asserting this role as the authority of Islamic law in Indonesia, following the regulatory changes since Suharto's fall in 1998 and the expansion of MUI's formal role in the state system for the administration of Islamic legal traditions in Indonesia, especially in the field of *sharī'a* economy (*mu'āmalāt*). These changes have intensified MUI's influence and the legal authority of its *fatāwā*.

As its institutional role has grown in scope, MUI continued to expand its authority in *fatwā* production in Indonesia. MUI seeks to intensify further the acceptance of its *fatāwā* among Muslim communities in Indonesia by engaging as many *fatwā* commissions and Islamic organization as possible in the *fatwā* production. This measure is adopted by MUI because there is no official mufti office in Indonesia, while the government (and some community/community organizations) need a view of the Islamic law that can be considered to represent Islam in Indonesia. Further, because of de-jure recognitions on the authority of MUI in the state administration of Islamic legal tradition in the field of *sharī'a* economy, *ḥalāl* certification, *hajj* management, and public health matters, KF-MUI expands the scope of its

authority in all fields of Islamic law by preparing, organizing, reviewing, and promulgating Ijtima Ulama resolutions. In the corporate zakat resolution, KF-MUI was reluctant to promulgate it as a *fatwā*, considering its inconclusive arguments and the controversial subject matter. Thus, no such *fatwā* currently exists. This finding substantiates my thesis that MUI has expanded its authority to administrate all aspects of Indonesia's Islamic legal tradition.

Notes

- 1 See Tim Lindsey, "Monopolising Islam: The Indonesian Ulama Council and State Regulation of the 'Islamic economy'," *Bulletin of Indonesian Economic Studies* 48, no. 2 (2012): 253–274.
- 2 Elucidation of Law No. 21 of 2008 concerning *Sharī'a* Banking art. 1(12) of Law No. 21 of 2008: "*Sharī'a* principles are the principles of Islamic law in banking activities based on the *fatwā* issued by the agency having authority in the determination of the *fatwā* in the field of *sharī'a*;" art. 26(2) of Law No. 21 of 2008: "The *Sharī'a* principles as referred to in art. (1) is ruled by the Council of Indonesian Ulama," art. 26(3) of Law No. 21 of 2008: "*Fatwā* as contemplated in art. (2) is promulgated in the Central Bank Regulation."
- 3 Elucidation of Law No. 21 of 2008 concerning *Sharī'a* Banking, art. 26(4): "The *Sharī'a* Banking Committee, consisting of the elements of the Central Bank, Ministry of Religious Affairs, and the public with a balanced composition, has expertise in the field of *sharī'a* and numbered eleven people."
- 4 Majelis Ulama Indonesia, *15 Tahun Majelis Ulama Indonesia: Wadah Musyawarah para Ulama, Zu'ama dan Cendekiawan Muslim* (Jakarta: Sekretariat MUI, n.d.), 85–91.
- 5 Hamka is one of the Indonesia's prominent ulama who also pursued philosophy, religious and literary writing, public lectures, politics, and journalism. He was affiliated with the Masyumi Party, the first Islamic political party in Indonesia, before being appointed as the general chairman of MUI. Besides that, he was an active member of Muhammadiyah, one of the most prominent Islamic mass organizations in Indonesia, until the end of his life. Thanks to his works in Islamic religion and Indonesian literature, he was awarded an honorary doctorate by Al Azhar University and Universitas Kebangsaan Malaysia. The Indonesian government later appointed him a national hero. See, for example, Zaid Ahmad, "Hamka (1326–1401/1908–81)" in *The Biographical Encyclopedia of Islamic Philosophy*, ed. Oliver Leaman (New York: Bloomsbury Publishing, 2015), 138.
- 6 Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975–1998)," *Journal of Islamic Studies* 15, no. 2 (2004): 149.
- 7 *Ibid.*, 150.
- 8 Majelis Ulama Indonesia, "15 Tahun," 46.
- 9 Majelis Ulama Indonesia, "15 Tahun," 47.
- 10 The conference was held on July 21–27, 1975. The 53 participants were representatives of the newly established regional council of ulama, representatives of the central committees of 10 existing Islamic organizations, several independent ulama, and 4 representatives of Muslim service members in the Indonesian Armed Forces; see Hosen, "Behind," 150.
- 11 Muhammad Atho Mudzhar, *Fatwas of the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975–1988* (Jakarta: INIS, 1993), 54.

- 12 Mudzhar, *Fatwas*, 54.
- 13 M. B. Hooker, "Islam and Medical Science: Evidence from Malaysian and Indonesian Fatwas," *Studia Islamika* 4, no. 4 (1997): 16; Hosen, "Behind," 154.
- 14 Hooker, "Islam," 16; Hosen, "Behind," 154.
- 15 Hosen, "Behind," 151.
- 16 Hosen uses the phrase "strong suggestion," especially from the president, that made the institution of a national council for ulama possible. Hosen, "Behind," 151.
- 17 Interview with Ichwan Syam, in Jakarta, March 13, 2012; see also Lindsey, "Monopolising," 261–262.
- 18 Mudzhar, *Fatwas*, 122.
- 19 Hooker, "Islam," 16.
- 20 Moch. Nur Ichwan, "Ulama, State and Politics: Majelis Ulama Indonesia after Soeharto," *Islamic Law and Society* 12, no. 1 (2005): 57.
- 21 They specifically analyze MUI's *fatwā* on abortion, which differ from the state law. Mohamad Abdun Nasir and Asnawi, "The Majelis Ulama's *Fatwā* on Abortion in Contemporary Indonesia," *The Muslim World* 101 (2011).
- 22 Piers Gillespie, "Current Issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama *Fatwā* No. 7 Opposing Pluralism, Liberalism, and Secularism," *Journal of Islamic Studies* 18, no. 2 (2007).
- 23 Syafiq Hasyim, "The Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and Religious Freedom," *Irasec's Discussion Paper #12* (2011): 6.
- 24 Hasyim, "The Council," 7.
- 25 They are *fatāwā* on frog breeding, rabbit meat, the mechanical slaughtering of animals, and family planning (the latter even prompted MUI to repeal its previous *Fatwā* on the prohibition of IUDs); the supporting government attitudes partly influenced the validity of Jeddah and King Abdul Aziz Airport as *miqāt* places for Indonesian pilgrims. Mudzhar, *Fatwas*, 119–120.
- 26 They are *fatāwā* on the prohibition of Muslims to attend Christmas celebration, inter religious marriage, child adoption, and sale of inherited land. Mudzhar, *Fatwas*, 120–121.
- 27 Mudzhar, *Fatwas*, 121.
- 28 Hosen, "Behind," 151.
- 29 Hasyim supports his conclusion from interview with a Muhammdiyah functionary who also an MUI member. Hasyim, "The Council," 8.
- 30 Nadirsyah Hosen, "*Fatwā* and Politics in Indonesia," in *Shari'a and Politics in Modern Indonesia*, eds. Arskal Salim and Azyumardi Azra (Singapore: ISEAS, 2003), 168–180.
- 31 Mun'im Sirry, "*Fatwas* and Their Controversy: The Case of the Council of Indonesian Ulama (MUI)," *Journal of Southeast Asian Studies* 44, no. 1 (2013): 100–117.
- 32 John Olle, "The Majelis Ulama Indonesia versus 'heresy': The Resurgence of Authoritarian Islam," in *State of Authority: The State in Society in Indonesia*, eds. Gerry van Klinken and Joshua Barker (Ithaca: Cornell Southeast Asia Program, 2009), 95–116.
- 33 This commitment is stated several times during his speech in MUI's national meeting of 2005 and 2007. See Syafiq Hasyim, "Majelis Ulama Indonesia and Pluralism in Indonesia," *Philosophy and Social Criticism* (2015): 5; Lindsey, "Monopolising," 258–259.
- 34 Lindsey, "Monopolising," 258–259.
- 35 Lindsey, "Monopolising," 258–259.
- 36 M.B. Hooker, *Indonesian Islam: Social Change through Contemporary Fatwā* (Crows Nest, NSW; Honolulu: Allen & Unwin and University of Hawai'i Press, 2003), 1.

- 37 Clark B. Lombardi and R. Michael Feener, "Why Study Islamic Legal Professionals?" *Pacific Rim Law & Policy Journal* 21, no. 1 (2012): 5–6.
- 38 Hooker, *Indonesian Islam*, 1.
- 39 Lombardi and Feener, "Why Study," 6.
- 40 Wael B. Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 209–254.
- 41 Lombardi and Feener, "Why Study," 9.
- 42 See Nadirsyah Hosen, "Hilāl and Ḥalāl: How to Manage Islamic Pluralism in Indonesia," *Asian Journal of Comparative Law* 7, no. 1 (2012), 4.
- 43 See, for example, Jan Michiel Otto, ed., *Sharīʿa Incorporated: A Comparative Overview of the Legal System of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 617, 629.
- 44 Hosen, "Hilāl," 9.
- 45 Deliar Noer, *Modernist Muslim Movement in Indonesia 1900–1942* (Singapore: Oxford University Press, 1973), 8, 80–82, 231–232.
- 46 Wahiduddin Adams, *Pola Penyerapan Fatwā Majelis Ulama Indonesia (MUI) dalam Peraturan Perundang-Undangan 1975–1997* (Jakarta: Bagian Proyek Peningkatan Informasi Penelitian dan Diklat Keagamaan, 2004), 174, 180.
- 47 Adams, *Pola Penyerapan*, 174, 180.
- 48 Adams, *Pola Penyerapan*, 180–181.
- 49 M. Cholil Nafis, *Teori Hukum Ekonomi Syariah: Kajian Komprehensif tentang Teori Hukum Ekonomi Islam, Penerapannya dalam Fatwā Dewan Syariah Nasional dan Penerapannya ke dalam Peraturan Perundang-undangan* (Jakarta: Penerbit Universitas Indonesia, 2011), 137.
- 50 Nafis, *Teori Hukum*, 107–108.
- 51 Interview with Ersu Tri Wahyuni, via Skype (Seattle–Manchester), July 29, 2012.
- 52 Compiled from online resources; interview with Asrorun Niʿam Sholeh, in Jakarta, March 13, 2012.
- 53 Interview with Asrorun Niʿam Sholeh, in Jakarta, March 13, 2012.
- 54 Interview with Asrorun Niʿam Sholeh, in Jakarta, March 13, 2012. Majelis Ulama Indonesia, *Himpunan Fatwā MUI Sejak 1975* (Jakarta: Sekretariat MUI and Erlangga, 2011).
- 55 Pedoman dan Prosedur Penetapan *Fatwā* Majelis Ulama Indonesia, Chapter II "Basic and Character of *Fatwā*," Chapter III "Methods to Promulgate *Fatwā*."
- 56 Pedoman dan Prosedur Penetapan *Fatwā* Majelis Ulama Indonesia, Chapter III "Methods to Promulgate *Fatwā*," Interview with Asrorun Niʿam Sholeh, in Jakarta, March 13, 2012.
- 57 Hosen "Behind," 149.
- 58 Mudzhar, *Fatwas*, 119.
- 59 Cf. Hosen for his observation on the advantages of collective *ijtihād* in modern time, especially when there are concerns of qualification of contemporary ulama to perform *ijtihād* and the crisis of thought in the Muslim world. See Nadirsyah Hosen, "Nahdlatul Ulama and Collective *Ijtihad*," *New Zealand Journal of Asian Studies* 6, no. 1 (June, 2004): 5–6.
- 60 As quoted by Hosen, "Nahdlatul Ulama," 6.
- 61 Hosen, "Nahdlatul Ulama," 7.
- 62 Interview Asrorun Niʿam Sholeh, in Jakarta, March 13, 2012.
- 63 Interview with Hasanuddin, in Jakarta, March 21, 2012.
- 64 Some Islamic organizations in Indonesia have their preferred *fiqh* books; for Nahdlatul Ulama, see Hosen, "Nadlatul," 20–25; for Muhammadiyah, see Nadirsyah Hosen, "Revelation in a Modern Nation State: Muhammadiyah and Islamic Legal Reasoning in Indonesia," *Australian Journal of Asian Law* 4, no. 3 (2002): 247–250.

- 65 Interview with Asrorun Ni'am Sholeh, in Jakarta, March 13, 2012.
- 66 Interview with Hasanuddin, in Jakarta, March 21, 2012.
- 67 This excludes the recent 2012 decisions because the MUI's and the KF-MUI's *fatwā* compilations were published in 2011.
- 68 All three decisions are from the 2009 Ijtima Ulama.
- 69 Both decisions are from the 2006 Ijtima Ulama.
- 70 Tim Lindsey, *Islam, Law and the State in Southeast Asia*, vol. 1: Indonesia (London: I.B. Tauris, 2012), 138.
- 71 Lindsey, *Islam*, 123, 138, 408–409.
- 72 Ichwan, "Ulamā', State and Politics," 45–49; Gillespie, "Current Issues," 213.
- 73 See, for example, Ibn Rushd and al-Jaziri who wrote *fiqh* on four schools of Islamic law (*madhhab*): Mālikīyya, Ḥanafīyya, Shāfi'īyya, and Ḥanābila. According to them, the aforementioned requirements were agreed by all four *madhāhib*. Ibn Rushd al-Qurtubi, *Bidayat al-Mujtahid wa Nihayah al-Muqtasid* (Beirut: Dar Ibn Hazm (1995), II: 482; Abdurrahman al-Jaziri, *Kitab al-Fiqh 'ala al-Madhahib al-Arba'ah* (Beirut: Dar Ihya at-Turath al-'Arabi, n.y.)), I: 590–591.
- 74 See Yusuf al-Qaradawi, *Fiqh al-Zakah (Volume 1)* (Beirut: Muassasah al-Risalah, 1984), 521–533.
- 75 Al-Qaradawi, *Fiqh al-Zakah*, 533.
- 76 M. Dawam Rahardjo, "Manajemen Zakat," in *Pedoman Pembinaan Badan Amil Zakat, Infaq dan Shadaqah; Hasil Pertemuan Nasional I BAZIS Se Indonesia 3–4 Maret 1992* (Jakarta: Ditjen Bimas Islam dan Urusan Haji Departemen Agama, 1992), 20.
- 77 Kh. Moch. Ilyas Ruchiyat, "Mendorong Pelaksanaan Zakat Bagi Tenaga Profesional dan Perusahaan," in note 73 above, 45–55; Kh. Ahmad Azhar Basyir, "Pokok-Pokok Bahasan Sumbang Pikir tentang Zakat, Infaq dan Shadaqah," in endnote 73, 57–60.
- 78 "Kesimpulan dan Rekomendasi Pertemuan Nasional I Badan Amil Zakat, Infaq, dan Shadaqah," in note 73 above, 3; see also Amidhan, "Pelaksanaan SKB Mendagri dan Menag tentang Pembinaan BAZIS No. 29 dan 47 tahun 1991," in Majelis Ulama Indonesia, *Keputusan Rapat Kerja Nasional Majelis Ulama Indonesia Th. 1992* (Jakarta: Sekretariat Majelis Ulama Indonesia, 1993), 59.
- 79 See their opinions in Noor Aflah, *Arsitektur Zakat Indonesia Dilengkapi Kode Etik Amil Zakat Indonesia* (Jakarta: UI-Press, 2009).
- 80 "Keputusan Komisi B Ijtima Ulama Komisi Fatwa MUI Se Indonesia III tentang Masail Fiqhiyyah Mu'ashirah (Masalah fikih kontemporer), ii. Masalah Yang Terkait Dengan Zakat" in *Ijma Ulama: Keputusan Ijtima Ulama Komisi Fatwa Se Indonesia III Tahun 2009*, ed. Ichwan Sam (Jakarta: Majelis Ulama Indonesia, 2009), 49–56.
- 81 Some Islamic scholars argue that Islam did not have a concept of a legal person since there was no precedent on the issue of an entity shielded from *fiqh al-mu'āmalāt*; see Timur Kuran, "The Absence of the Corporation in Islamic Law: Origins and Persistence," *American Journal of Comparative Law* 53, no. 4 (2005): 785–834; see also Imran Ahsan Khan Nyazee, *Islamic Law of Business Organization: Partnership* (New Delhi: Kitab Bhavan, 2006); Imran Ahsan Khan Nyazee, *Islamic Law of Business Organization: Corporations* (New Delhi: Kitab Bhavan, 2006); Nicholas H.D. Foster, "Islamic Perspectives on the Law of Business Organisations I: An Overview of the Classical *Shar'ā* and a Brief Comparison of the *Shar'ā* Regimes with Western-Style Law," *European Business Organization Law Review* 11 (2010); Nicholas H. D. Foster, "Islamic Perspectives on the Law of Business Organisations II: The *Shar'ā* and Western-style Business Organisations," *European Business Organization Law Review* 11 (2010).

- 82 See Kuran, "The Absence," 785.
- 83 Majelis Ulama Indonesia, *Keputusan*, 55.
- 84 Nyazee, *Islamic: Partnership*, 301, 316–317.
- 85 Noor Aflah, *Arsitektur Zakat Indonesia Dilengkapi Kode Etik Amil Zakat Indonesia* (Jakarta: UI-Press, 2009), 91–103; Didin Hafidhuddin, *Zakat dalam Perekonomian Modern* (Jakarta: Gema Insani Press, 2002).
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- 91 *Ibid.*
- 92 Moh. Taufik Ridlo, *Zakat Profesi dan Zakat Perusahaan* (Jakarta: Institut Manajemen Zakat, 2007).
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- 94 Nahar Nahrawi, "Masalah-Masalah Hukum Terkait dengan Zakat," in Majelis Ulama Indonesia, *Ijma Ulama Keputusan Ijtima Ulama Komisi Fatwā Se Indonesia III Tahun 2009* (Jakarta: MUI, 2009), 320–321.
- 95 Interview with Asrorun Ni'am Sholeh, in Jakarta, March 13, 2012; interview with Hasanuddin, in Jakarta, March 21, 2012; for examples on background, explanation, and elucidation of *fatwā*, see the latest compilation of *fatwā* publication.
- 96 Interview with Hasanuddin, in Jakarta, March 21, 2012; interview with Amir Syarifuddin, in Padang, April 7, 2012.
- 97 Interview with Didin Hafidhuddin, in Jakarta March 27, 2012.
- 98 Interview with Hasanuddin, in Jakarta, March 21, 2012.
- 99 Interview with Hasanuddin, in Jakarta, March 21, 2012; interview with Amir Syarifuddin, in Padang, April 7, 2012.
- 100 The paper is similar to the one he delivered during a little discussion on corporate zakat duty in BAZNAS.
- 101 Interview with Didin Hafidhuddin, in Jakarta March 27, 2012.

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4 IMPOSING CORPORATE ZAKAT

THE POLITICS OF STATE POLICY ON *SHARĪʿA* IMPLEMENTATION

This chapter looks at how corporate zakat became a new social policy area regulated and managed by the state in Indonesia. Doing this would allow us to understand better the overarching question of who has the authority to impose the obligation of corporate zakat in Indonesia and what this reveals about the politics of state policy on *sharīʿa* implementation in Indonesia. It focuses on analyzing the perspectives of zakat management stakeholders (ulama, zakat agents, the government) in this policy area, whether they perceive that corporate zakat should be regulated and whether this is an obligation state impose. It also asks whether state actors share similar perspective to those of ulama and zakat agents, whether they have concerns regarding the state's authority to enforce religious obligations, and to what extent they are concerned about regulating the transparency and accountability of zakat administration in Indonesia.

The state zakat administration is a relatively late development, especially when considering that the demands for its introduction stretch back to the 1950s or even earlier.¹ The state finally accommodated the demands of some Muslims in Indonesia in 1999 through the promulgation of Law No. 38 of 1999 concerning Zakat Management. Despite being regulated by the state, Indonesia adopted a voluntary system of zakat payment, which was at odds with the zakat administration's proponents' demands. If we compare this to other zakat payment systems in Muslim countries, Indonesia's position is not novel. Predominantly Muslim countries take a wide variety of zakat approaches, which can be grouped into three categories. First, some countries have no government system for zakat, and this is the most common approach. Second, we can identify countries where zakat payment is voluntary: the government facilitates the collection and distribution of zakat in the interest of transparency and accountability with varying degrees of governmental oversight and involvement. Bahrain, Bangladesh, Egypt, Iran, Jordan, Kuwait, Lebanon, and the United Arab Emirates adopt this system. Third, we have countries where zakat is mandatory: zakat is treated as a tax and distributed as an analog to welfare, and zakat evasion is punishable with fines and/or imprisonment. Countries with this system are Libya, Malaysia, Pakistan, Saudi Arabia, Sudan, and Yemen.²

The replacement of Law No. 38 of 1999 with Law No. 23 of 2011 prompts us to reexamine the state's authority to regulate and manage zakat in Indonesia. Even though the Legislature did not accept the government's proposal (the Ministry of Religious Affairs [MORA]) to introduce a mandatory zakat payment in the new law,³ the government did succeed in reaffirming its role as the zakat administrator in Indonesia. According to the new Zakat Law, to carry out zakat management, i.e., collection and distribution, in Indonesia, the government will set up state-run zakat agencies (Badan Amil Zakat Nasional or BAZNAS) at all levels, from national to local (provinces and districts/cities) as well as zakat collector units (*Unit Pengumpul Zakat* or UPZ) in either subdistricts/villages or government agencies and private companies.⁴ Meanwhile, the roles of existing non-state-run zakat agencies (*Lembaga Amil Zakat* or LAZ) are now subordinate to BAZNAS, and there are rigorous requirements to be fulfilled to maintain their authorized status as zakat collectors or to establish a LAZ.⁵ The new Zakat Law also penalizes unauthorized zakat collectors who collect, distribute, or utilize zakat funds by prescribing imprisonment and/or monetary fines for those offenses.⁶

In turn, this new development prompted a second inquiry, which is how the zakat laws were drafted, especially how the provisions relating to corporate zakat were incorporated into Indonesian zakat laws. As revealed in the previous chapter, Indonesian ulama – in this regard, the Council of Indonesian Ulama (MUI) – never agreed to impose the obligation of zakat upon legal entities, including corporations, and were only willing to consider this new obligation in 2009 through a decision of Ijtima Ulama of the All Indonesian *Fatwā* Commission of MUI and Islamic organizations (a collective *ijtihad* forum). However, MUI still has not promulgated the Ijtima Ulama's decision on this question as a *fatwā* even though its *Fatwā* Committee has further studied the matter. Meanwhile, ulama discussions on zakat matters in Indonesia are also rife with dissension: some scholars assert corporate zakat's obligation with or without qualification, while others argue that corporate zakat is not a religious requirement.

Despite its ambiguous status, the new Zakat Law No. 23 of 2011 stands and includes legal persons as subjects to zakat obligations. It prompts us to ask what references were relied upon to create and insert the provisions regarding the duty of corporate zakat? Or, who advised the government to include legal entities as subjects of zakat? Why were the provisions permitting/encouraging payment of corporate zakat included in the Law?

This chapter considers these questions in light of data gathered through interviews with informants involved in drafting and deliberating the Zakat Laws and archives of the minutes of meetings during the drafting and deliberating process. This chapter presents more subtle political and religious nuances and influences that have shaped the zakat domain's regulatory outcome.

Corporate Zakat in Law No. 38 of 1999 Concerning Zakat Management

The idea of corporate zakat before Law No. 38 of 1999

The idea of corporate zakat arguably became part of public discourse for the first time in Indonesia during the First All Indonesia BAZIS National Meeting on March 2–4, 1992. The purpose of the meeting was to raise public awareness on the Joint Ministerial Decision, i.e., the Ministry of Internal Affairs and the MORA, regarding the establishment of the Zakat, Infak, and Sedekah Collection Agency (BAZIS), as well as to discuss issues and practices of zakat in Indonesia especially corporate zakat and individual zakat paid by professionals.⁷ However, the National Meeting recommended establishing a BAZIS task force in companies but not collecting corporate zakat from companies.⁸

Earlier in 1980, the MORA had published a treatise on zakat as guidance for society in observing this religious obligation. The guidance was part of the Directorate General of Islamic Society Guidance and Hajj Affairs' activities to socialize the zakat concept to the Islamic community. The Directorate's other means were public talks in the government television broadcasts (*Televisi Republik Indonesia*, TVRI), booklets, and preaching materials.⁹ The guidance included guidelines on zakat for the zakat collector agents, composed by ulama and the MORA officials led by Syukri Ghazali (the then MUI chairman), Amidhan, Ibrahim, Muhda Hadisaputro, Usep Fathuddin, Muslim Abdurrahman, and Bambang Pranowo.¹⁰ The first edition of these was published in 1981/1982 and the second edition in 1983/1984. The guidelines were used during the training for zakat management held for the zakat collector agents. According to Amidhan, the guideline contents are still relevant.¹¹ This statement is supported by the fact that the MORA reprinted the guidelines as recently as 2002.

Although the guidelines mentioned that zakat payers are only individual Muslims,¹² we see that zakat is also due on capital within a partnership if the capital reaches the *niṣāb* (i.e., the minimum threshold for an item to be subject to zakat) and one year has passed since the partnership was set up. The treatise then explains that the partnership, not the individual partners, pays zakat because each partner's contribution is disregarded as the basis for the calculation of *niṣāb*.¹³

In 1992, Sjechul Hadi Permono, a professor of *sharī'a* from the State Islamic University of Sunan Ampel, Surabaya, and author of a dissertation on zakat law in Indonesia, wrote a treatise on the sources of zakat (*Sumber-Sumber Penggalian Zakat*). He discusses corporate zakat (*zakat perusahaan*) in a subchapter entitled "*Zakat Perusahaan dan Pendapatan*" (corporate zakat and zakat due on professional income). However, his discussion summarizes the pros and cons of corporate zakat's legal status in Muslim jurists' writing. He did not assert his position on this debate.¹⁴ What

is missing is whether the addressee of this obligation is the business' legal entity (*perusahaan*) or the owners/shareholders.

The discourse on corporate zakat duty emerged again in 1997 during a national seminar organized by Dompot Dhuafa and BAZIS Pertamina on July 11–12, 1997. In this seminar, a paper was delivered by Muhammad Syafii Antonio¹⁵ entitled “*Zakat Profesi dan Perusahaan*” (zakat due on professional income and corporate zakat), in which he supports the obligation of zakat imposed on companies and suggests that corporate zakat be regulated in order to remind companies when they ignore this obligation. However, his paper did not address the central question of whose shoulder this regulatory responsibility falls: ulama (through *fatwā*) or the government (through statutes) or both? We will discuss this issue further in this chapter.

Incorporating corporate zakat into Law No. 38 of 1999

The Zakat Law No. 38 of 1999 was drafted by a team led by Mukhtar Zarkasyi, one of the informants for this study, the then Head of Legal Bureau and Public Relations of the MORA. The drafting process involved participants from four related ministries: Religious Affairs, Social, Internal Affairs, Finance, and some ulama.

The provision for corporate zakat appears in art. 1(2) and art. 2 of Law No. 38 of 1999. The legislation begins with art. 1(2) defines zakat as alms due for payment by a Muslim or entity owned by Muslim(s) to be distributed to specified beneficiaries. Article 2 states that the subjects of zakat obligations are every citizen of Indonesia whose religion is Islam or any entity owned by Muslim(s). There is no explanation of what the article means by “*badan milik orang Islam*” (an entity owned by Muslim(s)): is it an entity with legal person status or not; is it a business entity, or does it include not-for-profit entities? The Elucidation of art. 2 refers to the citizenship of subjects of zakat obligations and the criteria for ability to pay zakat, i.e., Indonesian citizens (those who reside in the country and abroad), and who can pay zakat following the provisions of *sharīʿa*.

Lexical and teleological interpretations of an “entity owned by Muslim(s)” are then given by some of MORA’s officials. Muhammad Tamyiz, the then MORA Deputy Head of Development Zakat and *Waqf* in 2005, argues that the phrase “entity owned by Muslim(s)” refers to business entities owned by Muslims such as sole proprietorships, firms, limited partnership, and limited liability companies. He thinks that the obligation to pay zakat is attached to the Muslim owners, not to the entity owned by them.¹⁶ Mukhtar Zarkasyi states that an entity is a business entity or legal entity (*badan usaha* or *badan hukum*). This group is subject to zakat duty, he adds, because of fiqh works such as those by Yusuf al-Qaraḍawī list business entities or legal entities as zakat payers.¹⁷

Earlier in this section, I mentioned that some ulama were also involved in drafting the bill that became the 1999 Zakat Law. They included Sjechul Hadi Permono, professor of *sharī'a* from the State Islamic University of Sunan Ampel. When asked about the reference, or source of authority, for the corporate zakat duty, Mukhtar Zarkasyi responded:

Yes, maybe [we did refer to Yusuf al-Qaradawi's position]; it is among other sources. Some ulama involved in the drafting; there was Professor Syechul Hadi Permono, who continuously participated and played a role in drafting the Zakat Law Bill; there were not [any problems or objections from ulama], [it went smoothly] until the bill was done.¹⁸

Hence, the existence of an epistemic community (ulama) within the drafting team authorized the concordance of the Zakat Law with *sharī'a*. Thus, if Zarkasyi is suggesting that the concept of corporate zakat may appear in Law No. 38 of 1999 concerning Zakat Management because of the approval of ulama (he referred explicitly to Sjechul Hadi Permono), this suggests that the latter must have advised the government that legal entities engaged in business are also subject to zakat in Islam.

However, the real issue that emerged during deliberations on Zakat Law No. 38 of 1999 and its drafting within the MORA is not about the appropriate or permissible zakat subjects. Instead, it is the question of government intervention in the implementation of zakat in Indonesia. Zakat has been observed by Muslims and then distributed to specific beneficiaries for centuries. This direct method of zakat payment beneficiaries were mostly religious teachers (*Kyai* or the leaders of traditional Islamic boarding schools). During the legislative deliberations, lobbying from this group voiced their concerns to the Legislature members representing their interests. They questioned the government's credibility to manage zakat, given the heavy style of Indonesia's bureaucracy and widespread corruption within the government. Further, they were afraid that government intervention in the zakat administration in Indonesia would affect the sustainability of their organizational source of funds.¹⁹

Considering the situation, the government offered a solution in the form of two tracks of zakat collection, i.e., by government-sponsored bodies (*Badan Amil Zakat* [BAZ]) and voluntary sectors (LAZ). The concept of LAZ was initially intended for Islamic social organizations such as Muhammadiyah, Nahdlatul Ulama, and others to maintain their social work funds source. According to Mubarak, the Director-General of Islamic Society Guidance and Hajj Affairs, in the 1990s, the expansion of LAZ into Islamic banks and zakat collector bodies established by the voluntary nonprofit sector with no mass organization was excessive and unwarranted (*kebablasan*) and a departure from the intention of the Zakat Law.²⁰

As mentioned earlier, Law No. 38 of 1999 was prepared by a team formed by the MORA consisting of representatives and figures from several

ministries and zakat stakeholders, including MUI and the Zakat Forum (*Forum Zakat* or FOZ).²¹ Nevertheless, it was the MORA, according to Salim, which sought to dominate the enactment process.²² The promulgation of Law No. 38 of 1999 happened after President Suharto's authoritarian regime's downfall. Both scholarships on this period of political transition²³ and informants' responses in this study suggest that the proponents of zakat administration by the state had to wait until this time because national politics had become more accommodating to the Muslims in the wake of the emergence of factions in the Legislature that showed an increasing tendency toward Islamization. Further, the MORA attempted continuously to have Islamic law promulgated in Indonesia, and it saw this transition time as the right moment to force through zakat legislation. Some MORA leaders perceived that Muslims had been treated unjustly in the lead-up to Indonesian independence. In their view, Muslims constituted the majority within the Indonesian population but were defeated by the objections to *sharī'a* implementation in Indonesia posed by secular nationalist and religious minority groups.²⁴

The MORA forced through the Zakat Management bill after President Habibie signed the bill on Hajj Service on May 3, 1999. The Zakat bill was not originally on the agenda of legislation of the Legislature. Seeing the political transition impact on Muslims and available time for proposing another bill because the bill on Hajj Service was passed earlier than scheduled, the MORA seized this opportunity by proposing the Zakat bill. The MORA finalized its bill on Zakat management and obtained a letter of permission to initiate legislation from the State Secretary on May 15, 1999. The bill was presented to the Legislature on June 24, 1999, and deliberation began on July 26, 1999.²⁵ The process was rapid, and there was no motion from the Legislature's factions to reject the bill. In the history of debating Islamic legislation in Indonesia, nationalist-secularist factions such as the Indonesian Armed Forces faction (TNI-Polri), the Golkar faction, and the Indonesian Democracy Party (PDI) faction always harshly criticized any Islamic legislation and tied it to the issue of restoration of the Jakarta Charter to the Constitution, such as in the case of the draft bill concerning the Religious Courts. For this draft bill, however, the TNI-Polri and PDI factions supported it.²⁶

With regards to the corporate zakat duty, the legislation refers to a legal person as one of the zakat payers (art. 1(2) and art. (2)). When asked, the ex-MORA leaders involved in drafting the Zakat Law were unclear about where the concept originated and what it meant. One informant said that entity (*badan*) means Islamic social organizations such as Muhammadiyah and NU and are subject to zakat. Others referred to contemporary *fiqh* works, such as Yusuf al-Qaraḍawī, and justified the Law's provision by referencing ulama's involvement in the drafting team. Therefore, corporate zakat's obligation is not the primary concern of the drafters. This situation was caused by, among other things, MUI's stance toward the corporate zakat issue. In

a forum of cooperation between ulama and the government (the MORA) concerning zakat regulation in 1992, MUI stated that legal persons such as companies could not be subject to zakat in Islam because the zakat obligation in Islamic doctrine is only addressed to individual Muslims.

Also, there were other pressing issues during the deliberation process, especially whether zakat collection is mandatory or voluntary.²⁷ The MORA proposed the bill mandating zakat collection (art. 12(1)). The State Secretariat criticized this provision because it implied coercion in the zakat collection and unknowingly led to the Jakarta Charter's realization.²⁸ Thus, art. 12(1) was reworded with the added phrase "... upon notification by the payer."²⁹

Corporate Zakat in the New Zakat Law No. 23 of 2011

How was the corporate zakat idea developed after 1999?

The promulgation of the Zakat Law No. 38 of 1999 was followed by series of seminars to socialize the management of zakat in Indonesia under the Law, especially the provisions related to zakat and tax, i.e., zakat deductible from taxable income. Since the subject of zakat is the individual and entities, the seminars usually purported to discuss corporate zakat and its advantages for a company's tax position. These seminars were mainly organized by Dompot Dhuafa, the first and most prominent voluntary zakat collector agent (LAZ) in Indonesia, with the MORA and a business association or chamber.

The first seminar was on September 7, 2000, at Hotel Indonesia, Jakarta. The seminar's theme was "Corporate Zakat and the Implication of Enactment of Zakat Law and Tax Law." I was not able to find further information about speakers and the titles of the panel discussion. I only found the paper delivered by Gunadi, the then Director of Income Tax, of the Directorate General of Tax from archives of the Indonesia Magnificence of Zakat's library (see below).

The second seminar on Corporate Zakat was held at Jakarta Design Center, Slipi – Jakarta. On the agenda was a keynote speech delivered by Tolchah Hasan (the Minister of Religious Affairs) and two-panel discussions: the first one was on the perspectives of *sharī'a* and the business sector on corporate zakat; the papers were delivered by Didin Hafidhuddin (*Sharī'a* Advisory Board of Dompot Dhuafa), and Hisyam Sulaiman (Vice Chairman of *Himpunan Pengusaha Pribumi Indonesia* [HIPPI]). The second-panel discussion was on implementing Zakat Law and Tax Law; the papers were delivered by Syed Abu Bakar (Head of Sub-Directorate of Individual Income Tax) and M. Masykur Amin (Director of Islamic Affairs of the MORA).

The third seminar was on October 19, 2000, at Hotel Savoy Homann, Bandung. The seminar's title was "Zakat as a Tax Deduction –

Implementation of Zakat Law and Tax Law.” The agenda of the seminar was a keynote speech by CEO of Dompot Dhuafa and two-panel discussions: the first one was on the perspective of *sharīʿa* on corporate zakat calculation, and how to calculate it, the papers were delivered by Mohammad Hidayat (*Sharīʿa* Advisory Board of Bank Syariah Mandiri) and Taufik Ridlo (Consultant Manager of Indonesia Magnificence Zakat, the think tank of zakat of Dompot Dhuafa). The second-panel discussion was on the relationship between the Zakat Law and Tax Law, their implementation, and implication for business sectors; the papers were delivered by Eri Sudewo (CEO of Dompot Dhuafa), Edwin Kasim (Head of Tax Regional Office of West Java), and Sidik Priadana (Chairman of West Java’s chamber industry).

The fourth seminar was on March 21, 2002, in Jakarta. The seminar was themed with “Zakat as a Deduction of Company’s Taxable Income.” The agenda of the seminar was the presentation of three papers by Didin Hafidhuddin (*Sharīʿa* Advisory Board of Dompot Dhuafa) on *sharīʿa* perspective on the Zakat Law; by Tulus (Director of Zakat and *Waqf* Development of the MORA) on the role of the MORA in implementing the Zakat Law; and by Harry S. Hariadi (Head of sub-Directorate of Entity Income Tax of the Directorate General of Tax) on zakat and income tax in Indonesia.

Last but not least, there was an Interactive Seminar on MUI *fatwā* “Corporate Zakat Duty” in Jakarta on April 2, 2009. This seminar was a response to the decision of the Ijtima Ulama of 2009 concerning corporate zakat. However, I could not find further information about the seminar agenda from the Indonesia Magnificence of Zakat’s library and online news documentation.

These seminars always involved three key groups: ulama, who delivered papers and endorsed the concept of corporate zakat duty (see [Chapter 3](#) for details on ulama and their arguments); and the association of business or business chamber’s representative as the subject of corporate zakat. This group could use the forum as a learning medium to know how the concept could be implemented and what sorts of incentives were available for them from the tax regime. It also featured tax officials who delivered papers explaining the relationship between tax law and zakat law and how the corporate zakat payers could claim the tax incentives. For example, in the seminar “The Implication of the Enactment of Zakat Law and Tax Law” at Hotel Indonesia, Jakarta in 2000, the speaker from Directorate General of Tax, i.e., Gunadi, delivered a paper on “Zakat as a Reduction for Taxable Income.” He wrote that Law No. 38 of 1999 was the first time the government had regulated the relationship between zakat and income tax. At first, there was an impediment to the implementation of zakat as a deduction for taxable income because the existing tax law (Law No. 17 of 1983 concerning Income Tax) did not regulate it as such. With the promulgation of Law No. 17 of 2000 (third amendment of Law No. 17 of 1983), this impediment

was removed because the zakat received is not subject to income tax, and zakat paid may be deducted from the taxpayer's taxable income. Entities such as taxpayers are mentioned in the tax law and relation to zakat law; they are also eligible for tax benefits, i.e., deduction and exemption (art. 4(3.a.1)), either in their capacity as zakat payer or zakat recipients as long as the zakat was paid to zakat agents formed or authorized by the government (art. 9(1.9)).³⁰

Treatises on corporate zakat status and calculation method also flourished in this period either in books or publications on the internet. These treatises were written by ulama (some affiliated with MUI, some with zakat agents, some who serve as *sharī'a* advisers in the Islamic financial industries), advancing their support for corporate zakat as a new obligation in the Islamic doctrine of zakat (see details in [Chapter 3](#)).

The Council of Indonesian Ulama (MUI), on the other hand, reconsidered its position on the status of corporate zakat through organizing a zakat and *waqf* workshop. A joint workshop organized by MUI and the MORA in Bogor, September 6–8, 2001, was attended by MUI members, including its *Fatwā* Commission from central and provincial levels, Islamic social organizations, and officials of the MORA. The 2001 workshop decided,³¹ among other things: that the subject of zakat obligation is natural persons and business entities/institutions owned by Muslims either in sole proprietorships or partnerships running business relating to commodities or services. Previously, the First All Indonesia Zakat and Islamic Charity Agency (BAZIS) National Meeting in 1992 where ulama agreed that companies and legal entities are not subject to zakat. If the business entities do not pay their zakat, the obligation to pay will be imposed on the owner or capital owners or shareholders. The workshop also recommended that MUI and the MORA formulate Islamic jurisprudence on zakat following the context of Indonesia.³²

Thus, corporate zakat was no longer a peripheral issue in the development of zakat administration in Indonesia. The stakeholders in zakat administration – ulama, the government (the Tax Regime and the MORA), the (corporate) payers, and the zakat agents – all played roles in making this concept part of public discourse and, thus, its being (re)incorporated into the New Zakat Law of 2011.

Drafting process in the Ministry of Religious Affairs (MORA)³³

The Government set up a working team for the new Zakat Law Bill in 2010, comprising 17 people from the following ministries: the MORA, Internal Affairs, Social, and Finance. The MORA coordinated the working team because the subject matter was related to religious affairs.³⁴ The MORA team was led by its General Secretary and consisted of people from the legal bureau and the Directorate of Zakat Empowerment with backgrounds in law, *sharī'a*, and Islamic studies. Ex-MORA leaders were also invited to the

team, including Mubarok and Mukhtar Zarkasyi. The team worked intensively for around two to three weeks to respond to the Legislature draft bill. When it came to the *fiqh* points, the team's method referred them to ulama to draft the bill. As stated by the Head of Legal Bureau and Public Relations of the MORA:

The law is about zakat management [in Indonesia], so *fiqh* matter is not dominant; yet, when it comes to *fiqh* matters such as what are items subject to zakat, we have Didin Hafidhuddin [on board], he knows exactly about this, and he became our reference for *fiqh* problems and zakat development. We also have Nazaruddin Umar [was one of the MORA's Director General and now Vice Minister] as an expert of Qur'ānic exegesis. The MORA, therefore, communicated with ulama only for *fiqh* matters.³⁵

Regarding corporate zakat provision, the MORA team's work was to respond to the Legislature's draft bill, which excluded entities as zakat payers. The discussion day began with resolving whether the Law will include *zakāt al-fiṭr* (zakat due by the end of Ramadan).³⁶ Law No. 38 of 1999 regulated *zakāt al-fiṭr* too, but the Law emphasized the management of *zakāt al-māl* (zakat due on a Muslim's wealth).³⁷ The General Secretary of the MORA suggested that the new Law would also mention *zakāt al-fiṭr*, but this will not take over the role of local ulama and mosques, who traditionally served as the collectors and distributors of *zakāt al-fiṭr* for years in Indonesia.

The discussion then came to the issue of trading (*perniagaan*) as an item traditionally subject to zakat (*perniagaan* or *tijārah* (Ar.), because it is mentioned in *fiqh* books). The General Secretary wanted to clarify whether the paragraph related to "*perniagaan*" means trade activity or includes the entity running the trade. Consequently, is "*perniagaan*" an item subject to zakat and owed by individuals involved in the commercial exchange of goods and services, or does it also cover companies and corporations? A. Karim said that the *fiqh* mentions "*perniagaan*" as an item subject to zakat due to the profit yielded from trade, but not the entities (companies) which run the trade. He did not cite his authority for this, but he believes that this is the common opinion in books of *fiqh* when discussing the nature of the item "*perniagaan*" (*tijārah*) is subject to zakat.

Then, it came to the point regarding "terms and conditions" for items subject to zakat. Mubarok suggested terms and conditions, as well as calculation methods for both *zakāt al-māl* and *zakāt al-fiṭr*. However, the General Secretary responded to this proposal with, "We do not know, do we? [Do we know about] the technical [details] of zakat payment?" Hence, such details on zakat as terms, conditions, and calculation methods would be further regulated in the Ministerial Regulation to understand the community's uniformity.

Didin Hafidhuddin commented on the liability for zakat payments (it seemed that he missed the earlier session). He cited the International Zakat Meeting held in Kuwait 1984, which decided, *inter alia*, on corporate zakat's obligation as long as specific terms and conditions are fulfilled. According to Hafidhuddin, in this Zakat law draft, "*perusahaan*" (company) should mean not the individual who owns the company but the entity. He thus argued that "*perusahaan*" should remain in the paragraph as one of the items subject to zakat because it is different from *perindustrian* (industry).

The General Secretary then replied that the discussion from paragraphs c to h (art. 5 concerning items subject to zakat) covered both individuals and business entities. Thus, "*perniagaan*" (trade) can refer to individuals or trading companies. "*Perindustrian*" (industry) covers all but trading activities. Since the MORA intended to cover all types of business activities in this Law, the General Secretary then asked, "Is it possible to add an article which explicitly regulates that zakat is applicable for both individuals and companies? Accordingly, the items subject to zakat mentioned in this Law would automatically include both individual and companies." Didin Hafidhuddin then proposed the wording, and the General Secretary suggested the wording for art. 3 concerning the general stipulation that "*zakāt al-māl*, referred to in paragraph 2, are those kinds of properties owned by either individual zakat payers or legal zakat payers (*muzakkī*)."

Then, the ownership issue for companies' *muzakkī* (zakat payer) came up for discussion. Qomar, a member of the drafting team, then raised the query, "Business entities are not necessarily owned in the whole by Muslims. Thus, is this type of company subject to zakat too, taking into account the general stipulation that being a Muslim is a prerequisite for zakat obligation?" The General Secretary then referred the question to Didin Hafidhuddin, asking whether a shareholding company must be owned 100% by Muslims to make them liable to zakat. Didin Hafidhuddin responded by comparing Saudi Arabia's situation, which does not distinguish individual persons as shareholders. Thus, foreign shareholders are liable to zakat (his statement is unclear whether they are Muslims or non-Muslims).³⁸

Qomar, however, stated the different conditions between Indonesia and Saudi Arabia, with the latter being an Islamic state: "It will be a problem if this were to be implemented in Indonesia."³⁹ The General Secretary then suggested setting aside this issue and further regulating later.⁴⁰ A Karim, a member of the drafting team, added that if the company is located in a Muslim country in the *fiqh* of zakat, all shareholders are liable to zakat. However, he did not cite his source for this proposition.

Deliberation in the Legislature⁴¹

With regards to the definition of zakat, the Legislature proposed "*zakat adalah harta yang wajib dikeluarkan oleh orang Islam sesuai dengan ketentuan syariat Islam untuk diberikan kepada yang berhak menerimanya*" (zakat

is alms tax owed by Muslims following the provision of *sharīʿa* of Islam to be given to those who have a right to it). The government (the MORA) proposed the phrase “*orang Islam*” (Muslims) be changed to “*seorang Muslim*” (a Muslim), and after the word “Muslim” to add the phrase “*atau badan usaha*” (or business entities), because in their view those affected by the imposition of zakat would be not only individuals but also business entities (*badan usaha*).

After the amendment, the definition of zakat became “*zakat adalah harta yang wajib dikeluarkan oleh seorang Muslim atau badan usaha untuk diberikan kepada yang berhak menerimanya sesuai dengan ketentuan syariat*” (zakat is alms tax owed by a Muslim or business entities to be given to those who have a right to it in accordance with the provision of *sharīʿa*).

Then there was a discussion on the nature of business entities (*badan usaha*), whether general or specific to state and local-government-owned enterprises. There was also the question of where its definition should appear: the Law (general provisions) or in its Elucidation. Amidst this technical discussion, Mahrus Munir, from the Democrat Party faction, questioned the background for including business entities as zakat payers. The Vice Minister of MORA, who also a professor of Qurʾānic exegesis of the State Islamic University, Jakarta, Nazaruddin Umar, replied that the government proposed this inclusion according to the decision of the *Fiqh* Academy of the Organization of Islamic Conference (OIC), which had agreed to consider business entities as having the same legal status as natural persons, i.e., as legal persons. He did not give further information about the decision, nor did he explain how business entities are the same as natural persons in their rights and obligations before the law.⁴²

Muhammad Busro, a law-maker from the Golkar Party faction, then commented that the discussion has entered into the sphere of Islamic jurisprudence (*fiqh*), and *fiqh* matters continue to grow. He then cited a ruling in the *fiqh* book *Kifāyat al-akhyār* that only gold mining companies are subject to zakat to substantiate his argument. However, since the types of business entities have expanded in the contemporary economic reality, such as those involved in oil, gas, and nickel trade and so forth, are these companies subject to zakat too, he questioned. Likewise, concerning zakat on farming produce (*zurūʿ*), zakat is traditionally only due to staple food farming, but now the farming of chocolate and oil plants are more lucrative than those types mentioned in *fiqh* books; are these new types of produce farming subject to zakat too, he further questioned. These were Busro’s rhetorical questions aimed at supporting the inclusion of business entities as zakat payers. Hence, if business entities are mentioned in general provisions as zakat payers, this should also cover corporations such as PT Newmont, PT Freeport, and PT Pertamina (the national oil company). He argues that “our motive with this inclusion is to maximize zakat proceeds from the hidden treasures (*mengangkat pundi-pundi yang belum terangkat akarnya*) in Indonesia.”⁴³

Reference to the first two corporations made by the Member of Parliament is not without reason. Newmont and Freeport are multinational corporations notorious for environmental damage caused by their operation in Indonesia and have done little to improve the local people's socio-economic lives who live in areas where they operate, such as Papua West Nusa Tenggara.⁴⁴ Meanwhile, mining companies PT Freeport, PT Newmont, and PT Pertamina earn enormous revenues from Indonesia's oil and mineral exploitation. Hence, following up with Busro's logic, tremendous corporate zakat potential from the mining business sector can be utilized for Indonesia's social programs.

Nurul Iman, a law-maker from the Democrat Party faction, later questioned the status of non-Muslim shareholders and demanded its explanation be included in the deliberation before the provision passed. The General Secretary of MORA just replied to all concerns that there would be an explanation either in general provisions or in specific articles. However, he asked the forum to agree on zakat's obligation to apply to individual and business entities. (From the meeting minutes, the General Secretary had to leave the deliberation soon because he needed to catch a flight. Busro then persuaded all Parliament members to let him go, suggesting that this issue's deliberation was complete at the Legislature level.)

The forum agreed on the government proposal on May 30, 2011. The provision of the new Zakat Law related to corporate zakat finally reads art. 1(5) "zakat payers are a Muslim or business entities whose obligation to pay zakat"; art. 4(3) "*zakāt al-māl* [zakat due on Muslims and business entities' properties] referred to by art. 4(2) is property owned by individual zakat payers or business entities."

Hence, legal entities' obligation to pay zakat continued to be an issue in the Legislature drafting and deliberation process. Corporate zakat had been discussed at the national level in the form of a seminar series, and the debate peaked in the 2009 Ijtima Ulama. From process tracing, we can see that ulama proponents of corporate zakat (some affiliated with the Council of Indonesian Ulama, especially Didin Hafidhuddin, who is also the Chief of BAZNAS) were involved in the working team of the government (MORA) for the new Zakat Law, as well as in the later deliberations in the Legislature. Thus, although the issue of whether legal entities are subject to zakat is not definitively settled in Indonesia as a matter of Islamic law, due to MUI's reluctance to promulgate the decision of Ijtima Ulama of 2009 as an MUI *fatwā*, the provisions of corporate zakat were nevertheless accepted by the Legislature and thus remain part of the new legislative framework for zakat management. During the drafting process, the government's corporate zakat provisions are justified with the information provided by ulama supported the idea that legal entities have been considered as *shakhṣiyya i'tibāriyya* (legal persons), thus subject to the obligation of zakat, just like natural persons. It was decided at the national level by MUI during the Ijtima Ulama (incorrectly referred to by some drafters as a *fatwā*)⁴⁵ and by

the international ulama community (with the drafters referring to *fatwā* by al-Azhar University's jurists in 1965, the First International Conference of Zakat in 1984, and the OIC's *Fiqh* Academy Resolution in 1988). Thus, the government confirmed the ulama's authority as the interpreters of Islamic law; they also affirmed that the product of their interpretation (*fatwā*) is one of the authoritative sources in formulating statutes in Indonesia.

The same explanation also applies to the deliberation process. This stage provided more elaboration on the rationale for expanding the zakat collection scope, such as the enormous potential of zakat levied from Indonesia's corporations. To achieve this required regulation by the zakat law to provide a legal basis for collecting them. In this way, a modern interpretation of the zakat concept was introduced in Indonesia, with one mechanism: legal entities' inclusion as subject to the zakat duty.

Zakat Law and Politics on *Sharī'a* Implementation

Legal entities' obligation as subject to zakat in the new zakat law could have triggered resistance from the business sector because the very concept of corporate zakat remains controversial in Islamic jurisprudence. The primary sources of *sharī'a* state that only natural persons are subject to zakat. However, in practice, this has not been an issue in Indonesia, even among the many unfamiliar with the new law's provisions, because zakat payment and collection remain voluntary in Indonesia. There is no enforcement from the government in the form of, for example, sanctions imposed upon zakat evaders – either individual or corporate payers. Although the Law defines zakat as a (religious) duty imposed on individuals and legal entities and mentions both as zakat subjects, its implementation becomes a personal matter and usually depends on each zakat payers' moral consciousness.

Initially, there had been a government proposal to enforce zakat's obligation in Indonesia by penalizing zakat evaders. However, the Legislature turned down this proposal saying that Indonesia, where *Pancasila* was the state ideology, lacked authority to enforce a religious doctrine's obligations.⁴⁶ As with the case of the Zakat Law of 1999, the Legislature confirmed the position of the state as merely regulating the administrative aspects of zakat, i.e., authorizing and supervising zakat agencies. Therefore, issues emerging during the deliberation process were related to the administrative issues of zakat collection, especially the government's appropriate role in zakat administration: does it act simply as a regulator or both the regulator implementer the system?⁴⁷

What then does this reveal about the politics of the state toward the implementation of *sharī'a* in Indonesia? From the judicial review process at the Constitutional Court on government domination in the administration of zakat in Indonesia, we know that the proponents of the state administration of zakat maintain that state intervention is necessary because the voluntary zakat system has marginalized zakat's role. Meanwhile, zakat

can play in income redistribution. The full incorporation of zakat into the fiscal system may help Indonesia achieve its social justice goal. However, they use these arguments to differ in their government's appropriate role in the zakat administration. According to the proponents, the Zakat Law has violated the religious freedom clause in the Constitution. For example, the state sanctions unauthorized zakat collectors or diminishes civil society participation by imposing rigorous rules to establish a zakat agency. They believe *sharī'a* allows Muslims to pay their zakat through whichever zakat collector sees fit.⁴⁸ The government maintained that this kind of state intervention is necessary because the voluntary zakat contribution has marginalized zakat's role in income redistribution. The full incorporation of zakat into the economic system may assist Indonesia in achieving social justice objectives. Most importantly, the government believed that it could ensure good governance of zakat management by civil service organizations as they involve public money.⁴⁹

Nevertheless, the Constitutional Court upheld the constitutionality of state intervention in implementing zakat in Indonesia, i.e., BAZNAS as both the national operator of zakat and the coordinating body zakat agents in Indonesia. The full potential of zakat will only be unleashed if zakat agencies are transparent and accountable. Besides, with the *Pancasila* as the state ideology, the first principle is the belief in the almighty God. The Court argues that Indonesia is a religious welfare state according to the first principle. Thus, the state must guarantee public welfare through programs in line with, but not limited to, religions existing in Indonesia.⁵⁰

The Court, however, relaxed the rigorous checklist for acquiring an authorized status as a zakat collector. It changes the cumulative requirement of the mass organization status⁵¹ that a LAZ must acquire from the Ministry of Internal Affairs to an optional requirement. So, the formulation is no longer "LAZ is registered as an Islamic social organization which manages education, propagation, *and* social programs in the Ministry of Internal Affairs," but "LAZ is registered as an Islamic social organization which manages education, propagation, *or* social programs in the Ministry of Internal Affairs."⁵² The Court takes this measure to appreciate non-governmental organizations' role in increasing zakat payment awareness among Muslims and modernizing zakat agencies in Indonesia.

Regarding sanctions for unauthorized zakat collectors such as the staff of mosques or *Kyai* (leaders of Islamic boarding schools [*pesantren*]), the Court confirms zakat's partial constitutionality. Zakat is a religious obligation with a vertical dimension, i.e., worshipping God, but which at the same time has a horizontal dimension, i.e., social justice and redistributive income. The clause of freedom to manifest one religion (art. 29(2) of the Constitution) can be limited under the law. State intervention through sanctioning unauthorized zakat collectors is a kind of limitation on one's religious belief, which may hold that giving zakat to beneficiaries directly or through intermediaries such as *Kyai* or mosque staff (rather than through

the state) is guaranteed by *sharīʿa*. This kind of state intervention ensures the accountability of zakat management in Indonesia because it involves utilizing public money.⁵³ The number of zakat agents and their coverage is not reliable enough to force every zakat payer to channel their zakat through official zakat collectors. Sanctioning unauthorized zakat agents may hamper Muslims from expressing their belief to observe specific means of exercising their zakat's obligation. Thus, the Court found that government sanctions against Muslims who act as the unauthorized intermediary of zakat payment contravened freedom of religion and that such sanctions were accordingly unconstitutional.⁵⁴

In this judicial review of Zakat Law of 2011, the Court, again, uses legal reasoning of freedom of religion that is susceptible to limitation by law. Freedom of religion has two dimensions: internal and external. The internal dimension is to believe, while the external dimension is to manifest it. The external dimension of freedom of religion is subject to government intervention because it deals with multiple religious adherents, peace, and order. (This is consistent with the Constitutional Court's decisions on blasphemy law, i.e., the external dimension of religious freedom can be limited through law.)⁵⁵

Indonesian legal historians have described this kind of policy toward *sharīʿa* implementation in Indonesia as the readoption of the Dutch colonial policy of reception theory. The reception theory was proposed by Snouck Hurgronje (d. 1936), a Dutch orientalist, to the Dutch colonial government in Indonesia by which the government developed *adat* (customary) law more intensively than Islamic law. According to Hurgronje, as far as Indonesian Muslim practices are concerned, *adat* law was preferred to Islamic law, and Islamic law was only effective after being assimilated by *adat* law.⁵⁶ Having compared the Dutch colonial policy with Indonesian government policy on the implementation of Islamic law, Salim and Azra conclude their edited book containing essays on the state and *sharīʿa* from the perspective of Indonesian legal politics with the following considerations:

By controlling Islamic law [in this case: Islamic family law and *sharīʿa* court law], the Indonesian state has successfully instituted a new 'reception theory' – that the implementation of *sharīʿa* is officially legitimate only if it has been ratified as national positive law. This is true for some of the contents of *sharīʿa* that have been put into bureaucratic formulae; and its emergence into legal force is possible only with the government's political will.⁵⁷

Simon Butt adopts this argument in his study on the Constitutional Court Decisions on Islamic law in Indonesia (Muhammad Insa's case on the constitutionality of polygamous marriage's restriction and Suryani's case on the Religious Court limited jurisdiction in adjudicating Islamic criminal offenses. See details in [Chapter 2](#)), arguing that the Court recognizes Islamic

law only in specific narrow fields by excluding public and criminal law and denying Islam's independence of legal authority.⁵⁸

Although adopting the new reception theory is a legitimate way to characterize the state's politics toward *sharī'a* implementation in Indonesia, I argue that they are not all about adopting the Dutch legacy of reception theory, especially if we consider zakat subjects and corporate zakat obligations in Indonesia. To them, the meaning of *sharī'a* as moral guidance, instead of law, has motivated them to comply with zakat obligations in Indonesia (see Chapter 5), including its novel interpretation in the form of mandating business entities such as corporations to pay zakat. Their compliance with corporate zakat duty is not affected by the ratification of the *sharī'a* of zakat as national positive law in Indonesia (see Chapters 5–7). Hence, the binary opposition of the religious versus secular or the public versus private of Islamic law imposition and observance is untenable in Indonesia.

Also, by building on the analysis in Chapter 2, where I analyzed the evolution of Islamic legal authority in the field of Islamic family law, I further argue that the emergence of novel provisions in the Zakat Laws in Indonesia is still within the framework of Islamic law arguments that utilize *siyāsa shar'īyya*. From the process tracing outlined in this chapter, we can see that in every measure taken by the state, either at the stage of drafting and deliberating the (Islamic) zakat law in the government office (MORA), in the Legislature, or the judicial review process of the Constitutional Court, the deliberators have been advised by, or have taken into account, opinions of ulama. In the Zakat Law, the inclusion of corporate zakat provisions, as well as the state's further intervention in zakat implementation using the institution of BAZNAS and prioritizing official agents in channeling zakat, is justified through, *inter alia*, *maṣlaḥa* (public utility) and *sadd al-dharī'a* ("blocking the means") arguments. These arguments emphasize maximizing zakat's potency to realize social welfare in Indonesia and maintain transparency, accountability, and public money security.

Conclusion

Having looked at the process by which the Islamic doctrine of zakat, including corporate zakat, became a new area of social policy that is regulated and managed by the state in Indonesia, we find that the state seems to have been selective about – or has “cherry-picked” – the various scholarly opinions regarding zakat that it sought to implement. In particular, the state adopted a voluntary system of zakat payment under Law No. 38 of 1999 even though most of the supporters of state intervention in zakat administration demanded a mandatory system. As a result, the Law stipulated that individuals and legal entities must pay zakat because of a religious obligation, but the state took no coercive measures in implementing this obligation. The subsequent replacement law, Zakat Law No. 23 of 2011, retains

this voluntary system of zakat payment but now includes criminal provisions for unauthorized zakat collectors accepting zakat payments and distributing the proceeds. Furthermore, the National Zakat Collector Agency (BAZNAS) is designated as the major zakat administrator, while the non-governmental zakat collector agents (LAZ) are subsumed under BAZNAS and are considered as no more than “helpers” of BAZNAS. Meanwhile, rigorous checklists must be met to become an authorized LAZ,⁵⁹ and failure to do so will jeopardize LAZ because its activities of collecting and distributing zakat may become illegal.

As for corporate zakat provisions, despite their apparent novelty, the state took the ulama’s opinions expressed throughout the drafting and deliberating process for granted and, thus, incorporated them as provisions into the zakat law. There were no concerns from the Legislature about possible objections from corporations who are the targets of this obligation, except for non-Muslim shareholders of a corporation not supposed to be subject to zakat’s obligation. This matter was resolved through the Zakat Law’s general provisions, stating that being a Muslim is one of the zakat obligations conditions. However, there is no enforcement from the government in the form of, for example, sanctions imposed upon zakat evaders – either individual or corporate payers. Although the Law defines zakat as a (religious) duty imposed on individuals and legal entities and mentions both as zakat subjects, its implementation becomes personal. Usually, it depends on each zakat payers’ moral consciousness, as evidenced in the Indonesian Islamic Banks’ practices (see [Chapters 5–7](#)).

Notes

- 1 In 1951, the MORA issued a circular letter No. A/VVII/17367, dated December 8, 1951, stating that the MORA will not interfere with the zakat administration (so the government continued the Dutch colonial policy on zakat in Indonesia). Instead, the MORA encouraged Muslims to observe their religious obligation to pay zakat and ensured the zakat was distributed correctly according to *sharīʿa*. This circular letter arguably was issued in response to state intervention demands for the zakat administration in Indonesia. About the circular letter, see Andi Lolo Tonang, “Beberapa Pemikiran tentang Mekanisme Badan Amil Zakat” in *Zakat dan Pajak*, ed. Budi Wiwoho (Jakarta: PT Bina Rena Pariwisata, 1992), 268.
- 2 Russell Powell, “Zakat: Drawing Insight for Legal Theory and Economic Policy from Islamic Jurisprudence,” *University of Pittsburgh Tax Review* 7, no. 43 (2009–2010): 58–73.
- 3 This resembles the situation of Law No. 38/1999 when legislature also believed that the state does not have authority to enforce a belief on its Muslim citizens.
- 4 See art. 5(1), 16(1), *Law No. 23 of 2011 concerning Zakat Management*.
- 5 *Ibid.*, art. 17–20.
- 6 *Ibid.*, art. 38 and art. 41.
- 7 See Muhammad Dawam Rahardjo, “Manajemen Zakat,” in *Pedoman Pembinaan Badan Amil Zakat, Infaq dan Shadaqah; Hasil Pertemuan Nasional I BAZIS Se Indonesia 3-4 Maret 1992* (Jakarta: Ditjen Bimas Islam dan Urusan

- Haji Departemen Agama, 1992), 20; see also KH. Moch Ilyas Ruchiyat, "Mendorong Pelaksanaan Zakat Bagi Tenaga Professional dan Perusahaan," in *Pedoman Pembinaan Badan Amil Zakat, Infaq dan Shadaqah; Hasil Pertemuan Nasional I BAZIS Se Indonesia 3-4 Maret 1992* (Jakarta: Ditjen Bimas Islam dan Urusan Haji Departemen Agama, 1992), 45–55; KH. Ahmad Azhar Basyir, "Pokok-Pokok Bahasan Sumbang Pikir tentang Zakat, Infaq dan Shadaqah," in *Pedoman Pembinaan Badan Amil Zakat, Infaq dan Shadaqah; Hasil Pertemuan Nasional I BAZIS Se Indonesia 3-4 Maret 1992* (Jakarta: Ditjen Bimas Islam dan Urusan Haji Departemen Agama, 1992), 57–60.
- 8 "Kesimpulan dan Rekomendasi Pertemuan Nasional I Badan Amil Zakat, Infaq, dan Shadaqah," in *Pedoman Pembinaan Badan Amil Zakat, Infaq dan Shadaqah; Hasil Pertemuan Nasional I BAZIS Se Indonesia 3-4 Maret 1992* (Jakarta: Ditjen Bimas Islam dan Urusan Haji Departemen Agama, 1992), 3; see also Amidhan, "Pelaksanaan SKB Mendagri dan Menag tentang Pembinaan BAZIS No. 29 dan 47 tahun 1991," in *Majelis Ulama Indonesia, Keputusan Rapat Kerja Nasional Majelis Ulama Indonesia Th. 1992* (Jakarta: Sekretariat Majelis Ulama Indonesia, 1993), 59.
 - 9 My interviews with ex-officials of the MORA in this Directorate reveal that people's awareness to pay zakat was still low, according to the government. Zakat payment was channelled through religious leaders such as *Kyai* or local religious teachers. The background for this low observance of zakat compared to the pilgrimage to Mecca and Medina (*hajj*), for example, is the socio-political situation during the New Order regime that thwarted the MORA's attempts to increase public attention toward the concept of zakat, and the state reluctance to manage zakat. This left observance to a personal decision. This prompted the MORA to maintain efforts to get zakat regulated and thus managed by the state, despite the New Order regime and Suharto's antipathy toward the question. Interview with Mubarak, Jakarta, March 15, 2012 and Abdul Ghofur Jawahir, Jakarta, March 17, 2012.
 - 10 Syukri Ghazali, *Pedoman Zakat Seri 3 Fiqih Zakat* (Jakarta: Proyek Pembinaan Zakat dan Wakaf, Departemen Agama, 1981), verso.
 - 11 Amidhan, "Pelaksanaan SKB," 57.
 - 12 "[y]ang diwajibkan berzakat ialah orang Islam yang memiliki kekayaan yang cukup nisab." See Ghazali, *Pedoman Zakat*, 21.
 - 13 Ghazali, *Pedoman Zakat*, 51.
 - 14 Sjechul Hadi Permono, *Sumber-Sumber Penggalan Zakat* (Jakarta: Pustaka Firdaus, 1992), 133–140.
 - 15 He is among the pioneers of *sharī'a* economy studies in Indonesia. He earned a Bachelor of *Sharī'a* from Jordan University in 1990, a Master of Economics from the International Islamic University of Malaysia in 1992, and a Ph.D. in Banking and Microfinance from the University of Melbourne in 2004. His dissertation is about Islamic microfinance in Indonesia. Besides developing his Tazkia *Sharī'a* Economy College and *sharī'a* economy consultant company, he also serves as a *sharī'a* adviser in several *sharī'a* advisory boards of Islamic financial institutions. The Central Bank of Indonesia now appoints him to sit in the expert committee for *sharī'a* banking development.
 - 16 Juliandi Hasibuan, "Badan Islam sebagai Subyek Hukum Zakat Yaitu sebagai Muzakki dan Mustahik," Unpublished Undergraduate Essay (*Skripsi*) of Faculty of Law, Universitas Indonesia (Juni 2005), 107–108.
 - 17 Interview with Mukhtar Zarkasy, Jakarta, March 22, 2012.
 - 18 Interview with Mukhtar Zarkasy, Jakarta, March 22, 2012.
 - 19 Interview with Mukhtar Zarkasy, Jakarta, March 22, 2012.
 - 20 Interview with Mubarak, Jakarta, March 15, 2012; Interview with Mukhtar Zarkasyi, Jakarta, March 22, 2012.

- 21 Forum Zakat (FOZ) is an umbrella organization for zakat collector agents in Indonesia. Founded in September 1997, the FOZ functions to be, *inter alia*, mediating zakat issues with the government in the absence of a national zakat board. The first congress of Forum Zakat in January 1999 assigned the organization to prepare a draft law on zakat management by its members. Arskal Salim, *Challenging the Secular State: the Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), 127–128.
- 22 Salim, *Challenging*, 128.
- 23 See, e.g., Bahtiar Effendy, *Islam and the State in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003), 200, 209–210, 217–218.
- 24 Interviews with ex-MORA's leaders: Mukhtar Zarkasyi, Achmad Mubarak, and Abdul Ghafur Djawahir, Jakarta, March 15, 17, 22, 2012; Salim concluded that the MORA is one of the Jakarta Charter proponents and later for Islamization of Law in Indonesia. The 1998 MPR's decree (People Consultative Assembly) on Religion and Socio-cultural aspects only mentioned a law on hajj services would be enacted, but the MORA took the chance to force through the Zakat Law too during this transition period. Salim, *Challenging*, 128.
- 25 Salim, *Challenging*, 128, fn. 5–6.
- 26 Salim, *Challenging*, 6.
- 27 Other issues are the rivalry between the state-endorsed zakat agent (BAZ) and the voluntary sector (LAZ). A third pressing issue was the tax-deductibility of zakat payments. See Salim, *Challenging*, 130; Tim Lindsey, *Islam, Law and the State Volume I: Indonesia* (London: IB Tauris, 2012), 166; Alfitri, "The Law of Zakat Management and Non-Governmental Zakat Collectors in Indonesia" *International Journal of Not-for-Profit Law* 8, no. 2 (2006): 62–63.
- 28 Interview with Mukhtar Zarkasyi (Jakarta, March 22, 2012); see also Salim, *Challenging*, 128–129.
- 29 Salim, *Challenging*, 129.
- 30 It is worth noting that the presenters from the Directorate General of Tax delivered the same paper as conveyed by Gunadi in the other seminars. This might suggest that the Tax Regime has taken the matter of zakat to reduce taxable income seriously and considered zakat as an element of fiscal policy in Indonesia. Previously, the Tax Regime dismissed any proposal to reduce the tax paid by Muslims in Indonesia with their zakat.
- 31 The decision used MUI's letterhead and was signed by the MUI chairman and general secretary. This format takes the form of an MUI *fatwā* promulgation, but in substance, the document is not a *fatwā*.
- 32 See *Majelis Ulama Indonesia*, "Keputusan Lokakarya Zakat dan Wakaf," September 8, 2001. The hardcopy is available with the author.
- 33 This part comes from the transcript of the discussion on art. 5 of the new Zakat Law bill concerning zakatable items (property subject to zakat) and is triangulated with interviews with officials of the MORA, i.e., Imam Syaukani (Head of Legal Bureau and Public Relations) on March 29, 2012, and Wawan Djunaedi (Secretary for the MORA's working group) on March 29, 2012. There was no information about when the discussion happened because the MORA only gave me the specific part of the transcript meeting of art. 5 without cover.
- 34 The MORA has persisted with the effort to expand government authority in zakat collection; thus, the directorate of zakat of the MORA submitted its draft bill to Parliament first (the year was not clear, but it might have been around 2010). The draft bill made little progress because of the slow process of legislation in Parliament in recent years and members of Parliament disagreement with the MORA's proposal to centralize and monopolize zakat under the auspice of a new body; meanwhile, LAZ's role would be merely subsidiary

as they would be amalgamated and required to join the new body. See Lindsey, *Islam*, 172 (quoting news from Forum Zakat when met the members of Parliaments).

- 35 Interview with Imam Syaukani, Jakarta, March 29, 2012.
- 36 *Zakāt al-fiṭr* is a flat rate imposed on every Muslim – except those destitute – with the amount of a little above 2 kg of his/her staple food, or its equivalent monetary value due on the end of the fasting month (Ramadan). Muhammad Nejatullah Siddiqi, “The Role of the Voluntary Sector in Islam: A Conceptual Framework,” in *Islam and the Economic Development of Southeast Asia: The Islamic Voluntary Sector in Southeast Asia*, ed. Mohammad Ariff (Singapore: Institute of Southeast Asian Studies, 1991), 17–18; see also Alfitri, *The Law*, 56.
- 37 *Zakāt al-māl* is like a wealth tax on Muslims who possess certain liable assets such as gold, silver, cash, livestock, or agricultural products. It is only levied from Muslims whose wealth exceeds a threshold (*niṣāb*), with the rate ranges over 2.5%, 5%, or 10% contingent on items subject to zakat. Before calculating the *niṣāb*, the basic needs of a zakat payer and his/her family and financial obligations, and due debts should be paid first. Further, the possession of wealth ought to pass one year (lunar calendar), and *niṣāb* is counted at the end of a one-year acquisition. See Yusuf Al-Qaradawi, *Fiqh al-Zakah (Volume 1)* (Beirut: Muassasah al-Risalah, 1984), 917, 924, 930, 932; Monzer Kahf, “Zakah,” *Kahf.net: Papers*, <http://monzer.kahf.com/paper/english/zakah.pdf> (accessed April 27, 2010), 3–4.
- 38 The most recent version of the law provides that all Saudi and Gulf Cooperation Council Nation citizens and companies, who conduct business in Saudi Arabia in commercial goods, pay zakat at the rate of 2.5% (Decree No. 61/5/1 of 5/1/1383 H [28/5/1963 CA]). It is then further elaborated by Ministerial Res. No. 393 art. 6 of 6/8/1370 H (13/5/1950 CA). Zakat duty shall be collected in full under the provisions of Islamic law (*sharīʿa*) from all Saudi persons, shareholders of Saudi companies whose all shareholders are Saudi, and Saudi shareholders of joint companies whose shareholders are Saudi and non-Saudi.
- 39 Mandatory zakat payment is listed as a sort of constitutional requirement in the Saudi Basic Law. Saudi Basic Law art. 21 states “Zakat [...] shall be levied and dispensed to its legitimate beneficiaries.” See also Powell, *Zakat*, 67, fn. 190.
- 40 His statement is not clear which regulation: Government Regulation or Ministerial Regulation.
- 41 This part mainly come from the Problem Checklist number 14’s minutes’ meeting (*Daftar Isian Masalah nomor 14*) of Parliament, and triangulated with interviews with legislative drafters of Parliament, i.e., Ahmad Muchaddam Fahham, in Jakarta, on March 15, 2012 and Atisa Praharini, in Jakarta, on March 26 and 28, 2012.
- 42 International Islamic Fiqh Academy, 4th Conference in Jeddah, Saudi Arabia, February 6–11, 1988. Decree No. 28 (Resolution No. 3, Session 4 Zakat of Corporate Shares).

First, shareholders must pay the zakat due on their shares. The management of the company is to deduct and pay it on their behalf if (1) it is included in the articles of association, or (2) a decision on this was made in the annual general meeting, or (3) the law of the land requires that companies pay zakat on behalf of the shareholders; or (4) the shareholders confer to the company the right to pay, on their behalf, the zakat on their shares.

Second, the company pays zakat due on the shares in the same manner that a natural human being would; i.e., the shares of all the shareholders are treated collectively, like those of a single person. It is upon this consideration that the zakat would be paid.

Third, if, for any reason, the company did not pay zakat of its assets, the shareholder must pay the zakat due on his shares.

Fourth, if a shareholder sold his shares during the year, he should add their sale price to the rest of his zakatable wealth and pay zakat upon the due date for paying zakat on that wealth. In the case of a buyer, he should pay the shares' zakat following what has been mentioned above.

- 43 See the Problem Checklist number 14's minutes meeting (*Daftar Isian Masalah nomor 14*) of Parliament. The hard copy is available with the author.
- 44 See Jane Perlez and Raymond Bonner, "Below a Mountain of Wealth, a River Waste," *The New York Times*, http://www.nytimes.com/2005/12/27/international/asia/27gold.html?pagewanted=all&_r=0 (accessed April 23, 2015); Telly Nathalia, "Indonesia Court Clears Newmont in Pollution Suit," *Reuters*, <http://uk.reuters.com/article/2007/12/18/environment-newmont-indonesia-dc-idUKJAK23969720071218> (accessed April 23, 2015).
- 45 i.e., Researcher (Tenaga Ahli) of Parliament Secretariat prepared the academic draft and Nazaruddin Umar, the Vice Minister in his capacity as the expert adviser for the MORA working group.
- 46 This was the counter draft bill from members of Parliament. It contained no provision on sanctions for zakat evaders. It also opposed the centralization of zakat by the MORA and its new body and restoring the rights of LAZ. Also, it proposed the abolition of BAZNAS and replaced it with a limited-function body under the MORA, which will only function as the regulator of zakat. See Lindsey, *Islam*, 172.
- 47 Other issues were the status of LAZ being subordinate to the state zakat agency (BAZNAS); a debate on sanctions that should be imposed on those who act as zakat collectors but not authorized by the state; and the issue of zakat as a tax credit; cf. Nana Mintarti, *Indonesia Zakat and Development Report 2012* (Jakarta: Indonesia Magnificence of Zakat, 2012), 207.
- 48 Putusan Mahkamah Konstitusi Nomor [Constitutional Court Decision No] 86/PUU-X/2012 (*Zakat Agencies and Zakat Payers v The State*), 14–26, at <https://www.bphn.go.id/data/documents/86-2012.pdf>.
- 49 Putusan Mahkamah Konstitusi Nomor 86/PUU-X/2012 (*Zakat Agencies and Zakat Payers v the State*), 40–48.
- 50 Putusan Mahkamah Konstitusi Nomor 86/PUU-X/2012, 90–92.
- 51 "LAZ is registered as an Islamic social organization which manages education, propagation, and social programs in the Ministry of Internal Affairs."
- 52 Putusan Mahkamah Konstitusi Nomor 86/PUU-X/2012, 90–92.
- 53 See Putusan Mahkamah Konstitusi Nomor 86/PUU-X/2012, 89–90, 94.
- 54 Putusan Mahkamah Konstitusi Nomor 86/PUU-X/2012, 108–109.
- 55 See, e.g., Constitutional Court Decision No. 140/PUU-VII/2009: *Imparsial et al. vs. the State*.
- 56 See M. B. Hooker, "The State and *Sharī'a* in Indonesia" in *Indonesia: Law and Society*, ed. Timothy Lindsey (Sydney: The Federation Press, 1999), 98–99; Peter Burns, *The Leiden Legacy: Concept of Law in Indonesia* (Leiden: KITLV Press, 2004), 169–172.
- 57 Arskal Salim and Azyumardi Azra, "Introduction: The State and *Shar'a* in the Perspective of Indonesian Legal Politics" in *Shari'a and Politics in Modern Indonesia*, ed. Arskal Salim and Azyumardi Azra (Singapore: ISEAS, 2003), 13.
- 58 Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Pacific Rim Law and Policy Journal* 19, no. 2 (2010): 285; Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford and Portland: Hart Publishing, 2012), 248.

- 59 As per art. 18 of Law No. 23 of 2011 concerning Zakat Management, the society can set up a LAZ provided that permission is obtained from the Minister of Religious Affairs. The Minister will grant the permission when the following requirements are met: *first*, LAZ is registered as an Islamic social organization that manages education, propagation, and social programs in the Ministry of Internal Affairs; *second*, it has a legal entity (usually a foundation); *third*, it must secure a recommendation from BAZNAS; *fourth*, it has a *Sharī'a* Supervisory Board; *fifth*, it is not-for-profit oriented; *sixth*, its programs orient to Muslims well-being; *seventh*, it is willing to be audited, both *sharī'a* and financial; *eight*, it has technical, administrative, and financial ability to function.

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Part III

Law in Action



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5 COMPLIANCE WITH CORPORATE ZAKAT *SHARĪʿA*, LEGAL FICTION, AND POPULAR SUPPORTS

Indonesian companies have observed paying corporate zakat, despite its ambiguous status in Islamic jurisprudence (*fiqh* and *fatwā*) and Indonesian law (the Zakat Law). This chapter (and [Chapters 6](#) and [7](#)) explores how Indonesia's corporate community views corporate zakat's legitimacy and which ethical, religious, or secular values corporate payers (and non-payers) identify within this newly mandated practice. If zakat laws and regulations in Indonesia do not force businesses to pay zakat, do Islamic commercial banks obey this obligation to fulfill a religious obligation? The chapter will focus on case studies of compliance with corporate zakat by Islamic banks in Indonesia. These are 11 Islamic commercial banks, i.e., full-fledged Islamic banks (Bank Umum Syariah or BUS), as opposed to *sharīʿa* windows owned by conventional banks (Unit Usaha Syariah or UUS).

The BUS is selected as the case studies of my research for the following reasons: (1) the BUS management make their own decisions with regards to running the business, while the UUS follows their parent bank's management decisions; (2) the nature of the BUS business (and UUS as well), which must abide by the *sharīʿa* rules as per Indonesia banking laws and regulations; (3) their dual-tier corporate governance, i.e., the existence of a Board of Directors as well as a *sharīʿa* supervisory board, where the latter will assure compliance with *sharīʿa* in the company's management and products and answer all questions related to *sharīʿa* referred by management; and (4) the availability of publicly accessible annual reports (finance, good corporate governance, and corporate social responsibility [CSR]) with which to triangulate data from interviews for this study.

Employing case studies as the primary research method, I provide a detailed contextual analysis of each bank's experience when deciding to pay or not to pay their zakat to explore the legitimacy of corporate zakat, both in its interpretation and imposition, from the subjects' perspective. For this purpose, I first discuss the reality of corporate zakat payments in Indonesia. Next, I discuss data showing corporate zakat payments made by 11 Islamic commercial banks from 1992, when the first Islamic bank was established in Indonesia, to 2012. Finally, I analyze the decision-making process within

banks regarding the payment of zakat. From this process, I explore who or what are regarded as Islamic law authorities and how their legal/regulatory products' legitimacy is viewed from their intended subjects' standpoint.

Corporate Zakat Payments in Indonesia

Why does a corporation give?

A study on the pattern of corporate giving in Indonesia in 2001 and 2002 by the Public Interest and Research Advocacy Center (PIRAC) shows that corporate giving was generally unplanned and unforced. Contributions made were incidental and mostly in response to requests. The study concluded that the pattern was caused by corporate perceptions that social activities are not their responsibility. Regarding the phenomena of individual giving by chief executive officers, the study argued that executives' motivation from well-respected companies to give is individual and motivated by their religious motivation. The primary beneficiaries of such gifts are religiously motivated, including nursing homes, orphanages, and worship places.¹

Malaysia is more advanced in corporate zakat studies, given its status as a hub of *sharī'a* economic norms. For example, an explanatory study on factors influencing companies toward paying zakat in Malaysia in 2011 concludes a relationship between compliance with zakat by businesses, having Muslims as Boards of Directors, and industry type. That is, companies in the service industry and manufacturing have more robust responses toward zakat payment. The data was collected from the annual report of 281 *sharī'a*-compliant listed companies retrieved from the Bursa Malaysia's website and analyzed using content analysis.² The study also found that the zakat collection from the business still lacks compared to the collection of zakat from individuals' income in Malaysia.³

Another study by Hasan and Shanaz in 2005 investigated an entrepreneur group in Terengganu in Malaysia. They found several factors proven to influence paying zakat on business activity through feedback from 158 entrepreneurs selected through stratified random sampling. The factors included organization, attitudes and awareness, and level of knowledge. In their study, attitudes and awareness are the significant factors influencing paying zakat on business earnings.⁴

Through an ethnography of Malay-Muslim executives, business owners, and employees of large corporations, Sloane-White further explained the high awareness of the zakat concept's implementation, including corporate zakat and other forms of Islamic donations in Malaysia's corporations. According to Sloane-White, more and more corporates elites understand *sharī'a*; they want to apply its principles such as the social obligation – *farḍ al-kifāya* – which is understood in broad responsibility to contribute to the public good (*maslaḥa*) – into business operations. This group of people uses

their shared *sharī'a* vision to sustain the critical role of Islam in social and the economy as well as Islam as the solution to national and ethnic problems in Malaysia by campaigning for the concept of Islamic CSR which comes from zakat, corporate zakat, and other Islamic charities.⁵

The findings of previous studies from Malaysia are built on that corporate zakat's legal status as an obligation in Islam is not debated in Malaysia. In her study on corporate zakat practice in Malaysia, Steiner concludes that Malaysian business generally seems to accept the idea that there is a need to pay business zakat. It usually takes three years of lobbying before a business finally pays zakat from the first contact to payment. The compulsory nature of business zakat is not debated, but the practical implementation of it is. Hence, the zakat collection center usually provides training sessions for a corporate accountant to calculate zakat in their company.⁶ One reason may be that laws and regulations obliging Muslims in Malaysia to pay zakat provide sanctions and fines for zakat evasion.⁷ Certain businesses such as Islamic banks are required to pay zakat by statutory law. For other businesses, a zakat officer will look at the company's official records and decide whether the shareholders could be liable for zakat, e.g., indicators such as Muslim names.⁸

Without prejudice to corporate zakat status in Malaysia, this study will focus on Islamic commercial banks' compliance issues against a corporate zakat obligation when its legal status in Islamic law in Indonesia (*fatwā*) and Indonesian law (Law of Zakat Management) is still debated.

Recorded corporate zakat payments through zakat agencies 2000–2010

The potential of corporate zakat funds in Indonesia is enormous. Based on a study by the National Zakat Agency (Badan Amil Zakat Nasional, hereinafter BAZNAS) and the School of Economics and Management of Bogor Agricultural Institute in 2011, it is estimated that the total potential of zakat in Indonesia is around IDR 217 trillion per year which is equivalent to 3.4% of the national GDP. More than half of that figure comes from corporate zakat, whose estimated potential from the industrial sector amounted to IDR 114.89 trillion and from state-owned enterprises amounted to IDR 2.4 trillion. Zakat agencies, especially Dompot Dhuafa and BAZNAS, are aware of this tremendous potential and arguably want to intensify corporate zakat proceeds under their management. BAZNAS, for example, approaches state-owned enterprises and the Indonesian Chamber of Industry to socialize and intensify zakat collection, both as individuals and as corporate zakat, from the business sector by establishing zakat collector units in each company as an extension of BAZNAS.⁹

Despite this, data on corporate zakat payments in Indonesia is not readily available. When I requested information on the 2000–2010 corporate zakat payments from two major national zakat collector agencies,

BAZNAS and Dompot Dhuafa, the information given was simply a list of nonindividual zakat payers, isolated from their archives of zakat payers. Its accuracy, thus, is questionable because it may contain zakat paid by legal entities or zakat paid by individuals but channeled through the zakat agencies under a (legal) entity's name. Analysis of the Dompot Dhuafa's data reveals that some of the so-called corporate zakat payments made from 2000 to 2010 are zakat paid: by employees/Muslim employees (15 transactions); by congregations of mosques or Islamic recitation groups (15 transactions); by customers (seven transactions); zakat collected in mosques, e.g., from housing complexes or office towers (five transactions); by members of an association (three transactions); receiving zakat channeled from a zakat agency (three transactions). Many of the IDs on the list conflict because the same payers are repeated.¹⁰

Recapitulation from BAZNAS's data, on the other hand, does not provide transparent information about whether a company continues paying its zakat in the following years. When I sought to clarify this issue with BAZNAS, I did not receive a reply. Although zakat payers from BAZNAS's data are primarily listed under a legal entity's name (e.g., limited liability company, limited liability partnership, sole proprietorship, and so forth),¹¹ the zakat paid is not necessarily corporate. For example, SNS Law Firm (No. 65 on the list) paid zakat in 2008. When I conducted my first fieldwork in 2012, I listed this company as one of my case studies on compliance with corporate zakat in the category of limited liability partnership. When I lodged my research request with the law firm, it welcomed my research but said it had not yet paid corporate zakat. Thus, what has been paid so far is simply zakat made by the firm's employees but recorded by BAZNAS as an entity zakat payer (SNS Law Firm) instead of individual zakat payers (employees of SNS Law Firm).

This misclassification of zakat paid by employees as corporate zakat was also revealed from Dompot Dhuafa's data during my first fieldwork in 2012. PT IE (No. 192 on the list, listed as paying zakat continuously since 2008) and PT MI (No. 200 on the list, listed as paying zakat continuously since 2007) are companies in the mining sector. I made the case studies on compliance with corporate zakat in the mining sector to determine whether corporate zakat proceeds are used simultaneously as CSR. We should note that CSR is mandatory for companies, the business of which impacts the environment directly.¹² In its reply to my research request, the vice president HR and GS of PT MI wrote that my research "is irrelevant to our company's activities. Hence, we do not own documents related and needed for the research."¹³

In [Table 5.1](#), I compare corporate zakat payments recorded by two major zakat agencies in Indonesia (BAZNAS and Dompot Dhuafa) from 2000 to 2010. Data are compiled from BAZNAS's and Dompot Dhuafa's records.

The problem of misclassification may have been generated by a lack of accounting standards for zakat collector agencies. As a result, they simply

Table 5.1 Corporate Zakat Payments in Zakat Agencies 2000–2010

<i>Data year</i>	<i>BAZNAS</i>											<i>Dompét Dhuafa</i>										
	<i>00</i>	<i>01</i>	<i>02</i>	<i>03</i>	<i>04</i>	<i>05</i>	<i>06</i>	<i>07</i>	<i>08</i>	<i>09</i>	<i>10</i>	<i>00</i>	<i>01</i>	<i>02</i>	<i>03</i>	<i>04</i>	<i>05</i>	<i>06</i>	<i>07</i>	<i>08</i>	<i>09</i>	<i>10</i>
ΣCZP	?	?	?	?	?	29	41	49	66	107	139	10	16	19	33	30	34	30	51	100	96	91
Trans.	?	?	?	?	?	?	?	?	?	?	?	14	17	20	49	52	58	44	82	202	274	321
Nom.	?	?	?	?	?	?	?	?	?	?	?	\$ 3,623.17	\$ 2,377.66	\$ 18,771.25	\$ 16,540.08	\$ 21,035.66	\$ 29,360.35	\$ 9,256.17	\$ 46,929.70	\$ 110,371.41	\$ 90,417.23	\$ 167,293.98

Source: Corporate Zakat Payment in Dompét Dhuafa 2000–2010 (See Annex II); Corporate Zakat Payment in BAZNAS 2000–2010 (See Annex III).

Note:

ΣCZP: Numbers of Corporate Zakat Payer; Trans.: Transactions; Nom.: Nominal (1 USD = 12,000 IDR).

report received zakat funds from nonindividual payers as corporate zakat. The accounting standards for zakat collector agencies (i.e., PSAK 109), was released in 2012 by the Indonesian Institute of Accountants. Zakat proceeds received must be explained as individual payers or entity payers in the statement of fund changes. Accordingly, BAZNAS has distinguished zakat funds received as individual zakat and corporate zakat since 2012. In its 2012 financial report, BAZNAS received USD 140,025.4475 (USD 176,234.5196 in 2011) of legal entity zakat payers and USD 3,202,203.4980 (USD 2,519,603.8385 in 2011) of individual zakat payers. Meanwhile, from its audited financial reports of 2002–2011 available from its website, BAZNAS only reported zakat proceeds received under categories income of zakat on wealth and zakat on professional income.

In essence, it takes cross-checking for validation of corporate zakat payment transactions with the zakat collector agents, which receive corporate zakat channeled from nonindividual zakat payers. The problem is that not all zakat collector agents are willing to reveal nonindividual zakat payers because they want to maintain corporate financial information confidentiality.¹⁴ Some zakat collector agents are also committed to maintaining nonindividual zakat payers' trust, culminating in subtle rejections of data requests. Dompet Dhuafa, which responded positively to this research, still needed to secure confirmation from the nonindividual zakat payers before issuing a recommendation for this research.

When nonindividual zakat payer information is obtained, the next challenge is getting them to be involved in this research. Some companies were reluctant to cooperate because zakat payments they have made were not corporate zakat, such as PT IE and PT MI. Meanwhile, verifying this through their financial reports is impossible because the financial statements are not made public.

We may discover which companies pay their corporate zakat from news covering ceremonies held on the occasion of a company's payment of their corporate zakat to zakat agencies. For example, PT ReINDO,¹⁵ PT National Quality Assurance,¹⁶ PT K-Link,¹⁷ PT Energasindo Heksa Karya,¹⁸ and other companies make media announcements about their corporate zakat. The CEO of ReINDO said to the media during delivery of zakat to BAZNAS, "God willing, by paying corporate zakat, our company would grow bigger; further, this would allow our employees to work in peace because our business would be more blessed by Allah."¹⁹ The Director of PT Recci Indonesia said: "[This is] one example of the company's concern. I hope other similar companies also follow this effort. This payment departs from the concept of charity in that it cleans the business assets and property employees."²⁰ The *Sharī'a* Board of PT K-Link said: "This submission is to fulfill the religious obligation to help others. Zakat is not only related to Ramadan and *zakāt al-māl* [a type of zakat, see [Chapter 1](#)]. It is the principal charity in Islam. Its proceeds are channeled to credible and official institutions that will issue the payment receipt, which also serves as a deduction from taxable

income.”²¹ From these quotes taken from media, which covered the payments of corporate zakat made by some companies, the primary motivation to pay corporate zakat is religious (to fulfill the Islamic obligation to purify one's wealth) and is further motivated by tax interest (PT K-Link). The following section will explain Islamic commercial banks' experience with corporate zakat payment.

Corporate Zakat Payments of Islamic Commercial Banks

Until 2013, five Islamic banks (Bank Muamalat Indonesia [BMI], Bank Syariah Mandiri [BSM], Bank Mega Syariah [BMS], Bank Negara Indonesia Syariah [BNIS], and Bank Rakyat Indonesia Syariah [BRIS]) reported paying corporate zakat. Six other Islamic commercial banks, including Bank Panin Syariah (BPS) and Bank Syariah Bukopin (BSB), responded to this study by stating that their company has not paid corporate zakat. Informants from BPS stated that there had been discussions at the management level about paying corporate zakat, and the conclusion has been delivered to the owner, who then approved this plan (although the majority ownership of BPS, namely BP, is non-Muslim). Informants from BSB stated that they received a letter of appeal issued by BAZNAS about corporate zakat. This issue will be discussed internally at the management level and may be decided at the Annual General Meeting of Shareholders. Based on the financial statements, management, and Good Corporate Governance reports, neither bank had realized a corporate zakat payment plan in 2013.

The other four Islamic commercial banks (BCAS, BJBS, BVS, and BMSI) did not respond to my research requests. When information about their corporate zakat payments was sought through archives (management, corporate governance, and financial reports), BCAS and BMSI appeared not to have paid zakat. While BVS (2011, 2012, and 2013) and BJBS (2013) reported the availability of internal zakat from the banks, it is unclear whether this is corporate zakat or zakat on income paid bank employees. [Table 5.2](#) details eleven Islamic commercial banks' compliance with corporate zakat since its establishment. Data are compiled from interviews and archival records.

In the section below, I describe the process through which each bank decided to pay their zakat.

Bank Muamalat Indonesia (BMI)

In my interview with a BMI Senior Officer in the firm's Finance and Strategy Division, I learned that the bank had paid its corporate zakat since the beginning, following the year of its official operations commencing in 1992. However, the informant did not know precisely the process of deciding to pay corporate zakat in 1993, so he admitted that his answer

Table 5.2 Corporate Zakat Payments of Islamic Commercial Banks 2010–2012

No	Banks/Est.	Ownership (2012 report)	Compliance			Commenced
			2010	2011	2012	
1	BMI 1992	1 Islamic Development Bank: 32.74% 2 Saudi Economy and Development Cooperation (SEDCO) Group: 24.87% • Atwill Holdings Limited (17.91%) • IDF Investment Foundation (3.48%) • BMF Holdings Limited (3.48%) 3 Boubyan Bank of Kuwait: 19.03% 4 National Bank of Kuwait: 6.00% 5 Other Shareholders (legal entities and individuals): 17.36% • Abdul Rohim (3.72%) • Rizal Ismael (3.23%) • Apkindo-MPI Timber Cooperative or KOPKAPINDO (1.92%) • Public Shareholders of more than 800,000 legal entities and individuals (8.49%)	v \$ 107,816.58	v \$ 367,188.31	v \$ 570,045.00	Since 1993
2	BSM 1999	PT Bank Mandiri (Persero) Tbk.: 99.99999966%	v \$ 1,215,240.04	v \$ 1,598,150.09	v \$ 2,344,300.51	Since 2000
3	BMS 2004	PT Mandiri Sekuritas: 0.00000034% PT Mega Corpora: 99.999999% PT Para Rekan Investama: 0.000001% (both owned by Chairul Tanjung)	v \$ 180,241.75	v \$ 153,968.33	v \$ 527,166.66	Since 2008; delayed for 3 years
4	BRIS 2008	PT Bank Rakyat Indonesia (Persero), Tbk.: 99.99% Yayasan Kesejahteraan Pekerja (YKP) BRI: 1.11%	x	x	v \$ 186,583.33	Since 2012; delayed for 3 years (Continued)

Table 5.2 Corporate Zakat Payments of Islamic Commercial Banks 2010–2012 (Continued)

No	Banks/Est.	Ownership (2012 report)	Compliance			Commenced
			2010	2011	2012	
5	BNIS 2010	PT Bank Negara Indonesia (Persero) Tbk.: 99.9% PT BNI Life: 0.1%	N/A	v \$ 214,916.66	v \$ 264,083.33	Since 2011
6	BCAS 2010	PT Bank Central Asia Tbk.: 99.9997% PT BCA Finance: 0.0003%	N/A	x	x	
7	BJBS 2010	PT BPD Jawa Barat dan Banten, Tbk.: 97.63% PT Banten Global Development: 2.37%	N/A	x	x	N/A
8	BPS 2009	PT Bank Panin Tbk.: 99.999% Ahmad Hidayat: 0.001%	x	x	x	Planned in 2013; realized in 2015
9	BSB 2009	PT Bank Bukopin Tbk.: 77.569% PT Mitra Usaha Sarana: 1.404% PT Jamsostek (Persero): 6.142% PT Bakrie Capital Indonesia: 6.142% PT Mega Capital Indonesia: 6.142% Other Shareholders (Individuals): 2.601%	x	x	x	N/A
10	BVS 2010	PT Bank Victoria International Tbk.: 99.98% Public: 0.02%	N/A	x	x	N/A
11	BSMI 2010	Malayan Banking Berhad: 99% PT Prosperindo: 1%	N/A	x	x	N/A
Total			\$ 1,503,298.37	\$ 2,334,223.40	\$ 3,892,178.85	

Source: Compiled from interviews, banks' documents, and archives (Annual Shareholders' General Meeting Decisions; Financial Reports; Good Corporate Governance Reports; Annual Reports).

is probable and based on inference. The informant explained that BMI's decision to pay corporate zakat is mentioned in the *fatwā* of BMI's *Sharī'a* Supervisory Board (*Dewan Pengawas Syariah*, hereinafter DPS) and BMI's bylaws. BMI's corporate zakat payment was then decided in the Annual Shareholders' General Meeting (hereinafter ASGM), where it was resolved that BMI will pay zakat from each year's profit before tax. This process was repeated every year through the ASGM decision.²²

The *fatwā* of BMI's DPS gives a brief explanation about the process. The *fatwā* consideration part states that some shareholders asked BMI to pay zakat on the profit of their shares because their share had already reached the *niṣāb* (the minimum threshold for zakat due) and the profit of BMI from November 1991 to December 1992 also reached the *niṣāb*. The *fatwā* also stipulates that BMI will issue its corporate zakat at the end of its bookkeeping period. It is not clear how the shareholders' wish is communicated to the DPS. However, considering that one of the duties and authority of DPS in Islamic banking corporate governance is to issue a *fatwā* (now called *sharī'a* opinions after the institution of MUI's *Sharī'a* National Board in 1999), it was arguably BMI's management who brought this issue to the DPS for an answer. As for the basis of the *fatwā*, DPS mentioned two verses of the Qur'ān stating the general obligation of zakat²³ and some Muslim jurists' opinions, especially from the Shāfi'ī school of law. It obliges a corporation to pay zakat as it is considered a legal person (*shakhṣiyya i'tibāriyya*) as long as the corporation's wealth reaches the *niṣāb* and passes *ḥawl* (one-year uninterrupted ownership).

Bank Syariah Mandiri (BSM)

According to the BSM Assistant Vice President of the Accounting Division, BSM paid its corporate zakat following its establishment in 1999. However, the informant did not know precisely how to pay corporate zakat in 2000 because he started working in BSM in 2004.²⁴ From the annual report of 2000, it can be verified that BSM did indeed pay its corporate zakat from the beginning. First, the Board of Commissioners wrote in the report encouraging BSM development amidst sluggish economic conditions. Despite this, BSM could reach a profit of IDR 15.3 billion before tax and zakat payment. Second, the directors reported that up to the end of December 2000, the BSM funds source was from bank allotment (corporate zakat), employees' zakat, account holders' zakat, profit sharing margin, and others. Third, BSM also organized or followed corporate zakat seminars as part of human resource development.²⁵

When asked why BSM decided to pay, the informant said that the basis for paying corporate zakat was not a *fatwā* or positive law. Meanwhile, it is cumbersome from an accounting perspective, i.e., corporate zakat has become a burden for the current financial report as last year's financial transactions were paid and reported in the current fiscal year. The

informant added that BSM's decision to pay was more due to top management's awareness about Islamic values in general and zakat in general as an obligation. At that time, the concept of zakat on professional income also grew within BSM, so that the management referred corporate zakat implementation to that.²⁶

Specifically, the informant mentioned the accounting division's involvement in determining BSM zakat before it was approved by the annual shareholders' general meeting because the custody, management, and reporting of corporate zakat occur in the accounting department. Meanwhile, the corporate secretary division executes the utilization of corporate zakat. In that process, there is input from the DPS because corporate zakat and benevolence funds (*qard al-ḥasan*, i.e., non-*ḥalāl* income such as interest from non-Islamic banks correspondence) involve the DPS and its extension, i.e., compliance with the *sharī'a* division. The decision to finally pay was made through the annual shareholders' general meeting. In its decision, the general meeting mentioned that the company would pay corporate zakat, and no reasons were given because it is considered as a routine and internal policy.²⁷

Bank Mega Syariah (BMS)

According to the BMS Corporate Affairs Head, BMS has paid its corporate zakat since 2008, for-profit made in 2007, and it continues to do so to the present. For the period between 2005 and 2007, BMS had not paid zakat.²⁸ When I followed up with the informant via email, he said that it was a matter of choice, given the controversy surrounding corporate zakat's status as an obligation. The management during the 2005–2007 periods might have opted out from paying zakat. The informant could not clarify whether paying or not paying corporate zakat was even discussed by management at that time since he did not then work at BMS. Meanwhile, in 2007, there had been a change in decision makers (Directors), and the new Directors adopted a policy that the company had to pay corporate zakat.

The decision to pay corporate zakat seems to have been made just at the management level, based on the owner's agreement. BMS is not a public company but a sole proprietorship. The informant said that the process was thus quite simple in BMS; the owner even has aspirations that his other companies would also pay corporate zakat.²⁹

The process started with the Board of Directors making strategic decisions, including whether BMS would be paying corporate zakat. The decision was brought to the owner, who gave his approval. Management executed the decision, and it continues to be in force to the present. When asked why the Board of Directors decided this, the informant said that BSM management realized that Islamic banking is an ethical industry, so "anything ethical [...] according to ethics is a must, even though its status is disputed, we will opt-in."³⁰ Before making the decision, the management

looked at contemporary Islamic jurisprudence works by contemporary authors such as Yusuf al-Qaradawi and Wahbah al-Zuhayli.³¹ The DPS of BMS also played a role. When the management discussed the legal basis of corporate zakat, they communicated with DPS. The DPS gave their opinion on this matter, stating that there are many opinions on this issue, and according to DPS, the stronger argument is that business entities are subject to zakat,³² so then the Board of Directors decided to pay corporate zakat. The decision format was simply an approval memo from a division to the top of financial management and then to the Board of Directors; the Board of Directors then communicated the decision to the owner.³³

When asked whether there was an effort to clarify corporate zakat's status with MUI or other *fatwā* bodies, the informant said yes. According to the informant, Muhammadiyah and Nahdlatul Ulama were unaware that corporate zakat is a matter of dispute. MUI responded by suggesting that corporate zakat is a matter of scholarly dispute (*khilāfiyya*), but that it had issued a *fatwā* in 2009,³⁴ which further strengthened BMS's decision in paying zakat. BMS management was aware that the chief of DPS (Ma'ruf Amin) once said in the media around 2008 that there is no obligation for corporations to pay zakat. The management was also informed about the different opinions and choices that could be made. From these choices, the Board of Directors chose to take a precautionary act (*ikhtiyātī*), i.e., opting into the (presumed) obligation to pay zakat lest it turns out to be the more valid opinion. BMS (in this regard, the management, and owner) would have the peace of mind of having fulfilled the obligation, notwithstanding differences of opinion. Moreover, the government gives an incentive for corporate zakat payments in the form of a deduction to the company's taxable income; thus, "*lebih enak lagi kita dalam membayarnya*" (we feel better off paying the corporate zakat).³⁵

Bank Rakyat Indonesia Syariah (BRIS)

In my interview with a BRIS Senior Officer CSR, BRIS had just started paying its zakat in 2013 (for profits made in 2012) even though it was established in 2008 (as a spin-off from its parent company, Bank BRI, in 2009). When asked why in 2013, the informant replied that in 2012 BRI could make a profit; for the first two years, BRIS did not pay because it did not make a profit. He added that zakat should be paid from the company's profits. However, the idea to pay corporate zakat has emerged since BRIS's establishment, and the DPS suggested this.³⁶

Paying corporate zakat in BRIS began with implementing zakat on professional income levied from employees in June 2011. The nature of the employee's zakat is voluntary, as BRIS adopts negative confirmation, meaning if an employee does not opt-out from paying zakat in his payroll, the zakat will be automatically deducted from his salary monthly. Following

this policy, the DPS advised BRIS management that the company should pay zakat. The proposal was then brought to the Board of Directors' meeting in 2013, and then the ASGM decided that BRIS will pay zakat 2.5% of its profit.³⁷

The informant also mentioned that DPS conducted a study before recommending paying zakat to the management. The informant was in the team; he advised that "if we opt for CSR this becomes social funds, and the scope of CSR fund is general beneficiaries; as for zakat, it is for specific beneficiaries mentioned in the Qur'ān, i.e., the eight beneficiaries' group or *asnāf*."³⁸ Meanwhile, DPS gave input from religious arguments using textual proofs and independent reasoning, including ulama's opinions.³⁹ The informant, however, did not specify the religious arguments coming from DPS and ulama.

Bank Negara Indonesia Syariah (BNIS)

According to the Head and a Senior Officer of the legal compliance and secretariat division, BNIS has decided to use its profit to fund corporate zakat since 2011.⁴⁰ When asked why since 2011, the informants replied that BNIS was not a fully-pledged *sharī'a* bank before 2010, but a *sharī'a* division of a conventional bank, i.e., Bank BNI. Thus, all policies were made by the Bank BNI management, including the use of profits. Further, the new Zakat Law stipulates that legal entities are subject to a zakat obligation and were not promulgated until late October 2011.⁴¹ When I asked whether BNIS also refers to Law No. 38 of 1999, the informants said that it was not applicable, given that BNIS was established in 2010 and the process of deciding to pay zakat was initiated in 2011.⁴²

Before the interview started, we chatted about my topic, and as personnel of the Legal and Compliance Division, they saw corporate zakat as not an obligation of Indonesian law and regulations. They concluded this after examining the provisions of zakat obligation in the laws and regulations, which suggest the voluntary nature of zakat payment in Indonesia. When asked why BNIS finally decided to pay zakat, the informants said a study was made by BNIS management in 2010. The Legal and Compliance Division examined the effective laws and found no provision which compelled business entities to pay zakat, either in the Zakat Law of 1999 or the Limited Liability Law of 2007.⁴³

Meanwhile, the DPS, through its staff (one person who had a *sharī'a* background), conducted a study from the Islamic law perspective and brought the finding to the DPS. The DPS, which consisted of Hasanuddin and Ma'ruf Amin, both of whom are *mufīī* (jurisconsult) of MUI, opined that:

The parties obliged to pay zakat are not the company as a legal entity but the shareholders *qua* individual Muslims. So, if there are shareholders who are non-Muslims, they do not need to pay zakat. If the

non-Muslim shareholders are willing to set aside their profit for charity as the Muslim shareholders do, the fund can benefit the needy (*kaum dhu'afa*). As an Islamic financial institution, BNIS should practice *sharī'a* comprehensively (*kaffa*), in this case, having their shareholders pay zakat from their profits. Since the shareholder of BNIS is Bank BNI, which incidentally is a state-owned enterprise, BNIS is not qualified to be subject to *sharī'a* rulings (*mukallaf*). To be a *mukallaf* of zakat, one must satisfy a combination of conditions: being a Muslim, being a free person (*merdeka*, i.e., not a slave), attaining the religious majority age (*baligh*), and sane (*berakal*). Consequently, BNIS profit is not subject to zakat.⁴⁴

Despite the *sharī'a* opinion and findings of the Legal and Compliance Division, the Board of Directors kept bringing up the idea of paying corporate zakat to the Commissioners, who then agreed and recommended it. According to the informants, when BNIS had the first annual shareholders' general meeting in 2011, the Board of Directors stated that some Islamic banks already paid corporate zakat, and they also received questions from the media about whether BNIS had paid its zakat. The annual shareholders general meeting of 2011 finally approved the directors' proposal to spend BNIS's 2010 profit on zakat.⁴⁵ To the informants, the basis of corporate zakat implementation in BNIS is their wish to internalize *sharī'a* values, which distinguishes Islamic banks from conventional banks.⁴⁶

***Sharī'a*, Corporate Zakat Legal Fiction, and Popular Supports**

Indonesia's zakat payment system is voluntary because the legal mandate is unclear, and there is no sanction from the state for zakat evaders. Consequently, the payment of zakat is handed over to each zakat payer's moral conscience. Islamic commercial banks understand this condition, those either paying or not yet paying, because none of the banks (BMI, BSM, BMS) based their decision to pay zakat following the promulgation of Law No. 38 in 1999 on the provisions of this Law. Similarly, Islamic commercial banks that paid their zakat when the new Zakat Bill was intensively discussed in 2010 and finally approved in 2011 (i.e., BRIS and BNIS) did not base their reasons for paying zakat the provisions of this Law. Nevertheless, the new Zakat Law clearly states that zakat is the obligation of Muslim and business entities. BNIS specifically explained that its decision-making process was preceded by a study examining the legal and regulatory aspects of zakat in Indonesia; it emphatically said no provision forces businesses to pay zakat. Table 5.3 summarizes Islamic commercial banks' reasons to pay (or intention to pay) corporate zakat compiled from interviews and archives.

It could be assumed that the other six Islamic commercial banks are not paying their zakat because there is no obligation to do so in terms of Indonesia's laws and regulations. BPS and BSB emphatically said that there

Table 5.3 The Reasons of Islamic Commercial Banks Pay (or Will Pay) Zakat

No	Bank	Initiative	Process	Why pay (or will pay)?					
				Legitimacy		Other			
				Zakat law	Fatwā/ Sharī'a opinion	Zakat principles	Type of industry	Size	Benchmark
1	BMI	Shareholders	Management ↓ DPS (internal fatwā) ↓ ASGM ↓ Documented in bylaws	N/A	Yes, internal fatwā	Yes	Yes	No	No
2	BSM	Management	Management ↓ DPS ↓ ASGM	No	No	Yes	Yes	No	No
3	BMS	Management	Management ↓ DPS ↓ Owner	No	No	Yes	Yes	No	No
4	BRIS	Management	Management ↓ DPS ↓ ASGM	No	No	Yes	Yes	Yes	No
5	BNIS	Management	Management ↓ DPS ↓ ASGM	No	No	Yes	Yes	No	Yes
6	BPS	Management	Management ↓ DPS ↓ Owner	No	No	Yes	Yes	Yes	No
7	BSB	N/A		No	N/A	N/A	N/A	N/A	N/A

Source: Compiled from interviews, banks' documents, and archives (Annual Shareholders General Meeting Decisions; Financial Reports; Good Corporate Governance Reports; Annual Reports; BMT's *Sharī'a* Supervisory Board's *Fatwā*; BSM's Article of Incorporation and Bylaws; BNIS' *Sharī'a* Opinion of *Sharī'a* Supervisory Board; BSB Bulletins).

is no obligation to pay zakat for the corporate enterprise. BPS even said that many business people do not care about the provisions of corporate zakat in the Zakat Law because there is no obligation there. If zakat laws and regulations in Indonesia are not forcing businesses to pay zakat, do Islamic commercial banks obey this obligation to fulfill a religious obligation?

Based on the textual and historical analysis of the Zakat Law provisions, the obligation of zakat is accordingly derived from Islamic law (see [Chapter 4](#)). However, even in Islamic law, there are differences of opinion about the status of corporate zakat obligation. The obligation of zakat is traditionally and historically only applied to Muslim individuals who meet specific requirements (a Muslim, having reached puberty, being rational, their wealth reaching the minimum threshold or *niṣāb*, and one year of ownership [*ḥawl*]). Contemporary ulama of *fiqh* have written on corporate zakat when discussing zakat's obligation on companies' stocks and bonds, such as Abdurrahman Isa and Abu Zahrah. Abu Zahrah, Abdurrahman Hassan, and Abdul Wahab Khallaf further specify that the company as an entity is also required to pay zakat from profits earned before it is distributed to shareholders, while shareholders are also required to issue zakat of their shares (including part of the dividends earned).⁴⁷ Yusuf al-Qaradawi considered this provision to be contrary to Islamic principles, which prohibit the imposition of zakat twice against the same property type (double zakat), and he argued that only one of the two forms of zakat (on a company or a stock/bond) is applicable.⁴⁸

This difference of opinion then was sought to be reconciled through forums involving ulama. In 1984, the First International Conference on Zakat in Kuwait decided that corporate zakat is mandatory if it satisfies the following four provisions: the presence of the provision of governing laws; the company's bylaws also stipulate it; the Annual Shareholders General Meeting decided it, and the approval of company's shareholders is given to pay zakat on their behalf. The Academy of Islamic *Fiqh* of the Organization of the Islamic Conference (OIC) issued a resolution from the fourth conference in Jeddah in 1988 that shareholders must pay zakat on their shares; a company will calculate and release on behalf of the shareholders if it meets the four conditions above. The company must also issue zakat on their assets; if the company does not do so, the shareholders must pay zakat on their shares.

Despite the existence of two *fatāwā* above, ulama in Indonesia still have different opinions about the corporate zakat obligation status: some deny it, some accept it entirely, and some accept it with conditions (see [Chapter 3](#)). The Council of Indonesian Ulama (MUI) has not taken a position in 1992 but recommended it in 2000. However, the MUI's *Fatwā* Commission released media statements in 2007 and 2008 rejecting corporate zakat. In [Chapter 3](#), the 2009 Ijtima Ulama decided that a qualified company must pay zakat, either as a legal person (*shakhṣiyya i'tibāriyya*) or a representative of the shareholders. This decision was not promulgated as a *fatwā* by MUI as there are sharp disagreements about the corporate zakat obligation at the Council's *Fatwā* Commission level.

Many ulama of the MUI's *Fatwā* Commission (and the MUI's National *Shari'a* Board) sit as members of the *Shari'a* Supervisory Board in Islamic

commercial banks. Hence, these ulama would give *sharīʿa* opinions according to their preferences. Didin Hafidhuddin (BRIS), Syafii Antonio, and Mohamad Hidayat (BSM) belong to the group of ulama supporting a corporate zakat obligation. At the same time, Maʿruf Amin (BMI and BNIS), Hasanuddin (BNIS), and Ikhwan Abidin (BSB) come under the group of ulama who disapprove of the obligation of zakat on legal persons such as business entities.⁴⁹ Even so, the decision of Islamic commercial banks to pay (or not to pay yet) was not too affected by the *sharīʿa* opinions given by the *Sharīʿa* Supervisory Board, except for the case of BMI. (The decision occurs when the management brings this issue to the Board, as in BMS, BRIS, BNIS, and BPS.)

When asked why they decided to pay (or pay in the future), all Islamic commercial banks in this case study (BMI, BSM, BMS, BRIS, BNIS, and BPS) associate their answers with the principles of zakat (i.e., to purify a Muslim's wealth) and the nature of their industry which closely relates to *sharīʿa*. For example, a BMI informant said:

BMI is the first Islamic bank and [implements the] pure *sharīʿa*. [The payment of corporate zakat is] to purify our profit [...] to express *sharīʿa*. [If] we see that BMI has committed to pay zakat since the beginning of its establishment, this shows BMI's commitment to zakat, [because] the nature of our business and we want to implement *sharīʿa*.⁵⁰

A BSM informant stated:

The decision to pay [zakat] is because of our awareness that [zakat] is an obligation, although we realize that there is a difference [of opinion about] it. We know about the concept of corporate zakat; there is an opinion that [legal] entity is not obliged [to pay zakat] because zakat obligation is imposed on the individual, but there are also opinions that say that [legal] entity is required [to pay zakat]. We chose the opinion that obliges corporate zakat because we see greater utility [than not paying] and we are an Islamic financial institution [...] There is an anecdote at that time "corporations do not testify the Islamic faith (*shahada*). [Hence, they cannot be Muslim, which is the prerequisite for bearing legal responsibility in Islam]. Observing [corporate] zakat obligation will not make corporations enter heaven [as the reward of paying zakat]; it is shareholders who should get the burden of zakat payment" [...] As a *sharīʿa* institution, we must deliver utility; this is the uniqueness of Islamic banks. If Islamic banks do not pay [then], what is the difference between Islamic banks and conventional banks? Although the new Zakat Law does not oblige corporate zakat [sic. enforce its obligation], it does not change our decision.⁵¹

Meanwhile, a BMS informant explained:

We are aware that Islamic bank is an ethical industry. We must uphold all ethical values: either *sharī'a* or law. [In] our law, there is no obligation [of corporate zakat], the government only encourages to pay it by [giving] incentives. We feel morally obligated [to pay zakat] not [because of] positive law, [instead] it relates to our business ethics. [We] realize that zakat is obligated [but] corporate zakat is *khilāfiyya* [a matter of dispute], but we decided to get out of the difference of opinion (*khurūj 'an al-khilāf*), [and so] we pay zakat. [It] is an obligation in Islam, there is an opinion [saying that] *shakṣiyya i'tibāriyya* [a legal person] subject to zakat obligation [too]; how come as a *sharī'a* bank we do not pay our zakat? [If] *sharī'a*-based legal entities do not pay [zakat], how do we expect other kinds of legal entities to do so?⁵²

The BRIS informant explained: “The reason why [our] management decided to pay corporate zakat is; first is to comply with *sharī'a*, corporate zakat is obligatory according to some opinions; second, we expect that by paying corporate zakat, we would be able to provide the means for benefitting society and BRIS.”⁵³

In addition to giving the principal reasons for paying corporate zakat and relating the payment of zakat to the industry's nature, two Islamic banks also associate their decision with the size of the profits earned and considered eligible zakatable wealth (BRIS and BPS). When asked why they just planned to pay zakat in 2013, the BPS informant said: “This is a new bank; we have just started operations so that we can gain profit or loss for the period; we do not get profit [previously], so there is no zakat of course; the reasonable profit to [pay] corporate zakat is from the profit of 2012; IDR 400-500 million profit is not eligible yet to pay zakat, let alone to cover the losses of last year.”⁵⁴

Islamic jurists make an analogy between the terms and conditions of corporate zakat and zakat on trading (*urūd al-tijāra*). The *niṣāb* of zakat on trading and corporate zakat is 20 dinars (equivalent to 85 g of pure gold). Hence, if a company has year-end wealth (capital and profit) greater than or equal to 85 g of gold, it must pay zakat of 2.5% of the wealth. If we assume a gram of gold is equivalent to IDR 800,000.00 (USD 66.66), then the *niṣāb* of corporate zakat is IDR 68,000,000.00 (USD 5,666.66). BRIS posted a profit before tax in 2010 (IDR 451,325,000.00 or USD 37,610.42) and in 2011 (IDR 417,525,000.00 or USD 34,793.75), while the BPS in 2011 (IDR 310,268,100.00 or USD 25,855.675). If we follow the provisions of zakat on trading, there is the potential for corporate zakat on BRIS and BPS from the first year they officially operated as Islamic commercial banks.

Since the company's size becomes a critical factor for some Islamic commercial banks to pay corporate zakat, they have not complied with this

novel obligation. When they see significant growth, however, they start to pay their corporate zakat voluntarily. For example, BPS announced in April 2015 that it would pay corporate zakat for profit made in 2014. The decision was made in the Annual Shareholders' General Meeting of BPS. The meeting revealed that BPS was the Islamic commercial bank with the highest growth rate in the *sharīʿa* banking industry in 2014. BPS announced that it would pay corporate zakat to IDR 2.5 billion beyond the budgeted CSR and non-*ḥalāl* income (e.g., penalties for default payments of loans).⁵⁵ Earlier, I mentioned that there had been ongoing discussions at the BPS management level to pay corporate zakat in 2013, which was finally realized in 2015. One of the reasons the BPS informant maintains about why the bank discussed the plan to pay corporate zakat in 2013 – while it was established in 2009 and made a profit every year – is the size of the company, i.e., the amount of profit that is deemed to be eligible to pay zakat.

One Islamic commercial bank (BNIS) also mentioned benchmarking to other Islamic commercial banks' practices as one reason they pay corporate zakat. As mentioned earlier, BNIS's compliance with corporate zakat is also a response to mass media queries. There is no information about which mass media posed the question to BNIS. However, in the Reformation era, several mass media outlets in Indonesia can be categorized as "green media" (Islamic media), which voice and cover Muslims' interests consistently. For example, *Republika* regularly covers news and features related to zakat in its printed and online version. *Republika* has been concerned with zakat in Indonesia; the newspaper instituted the largest zakat agency Dompot Dhuafa. It also initiated the establishment of BAZNAS together with Forum Zakat. The newspaper's weekly zakat page mainly covers BAZNAS activities and columns written by BAZNAS leaders such as Didin Hafidhuddin and Fuad Nashar. Zakat agencies also publish zakat magazines such as Forum Zakat's *Info+Z*⁵⁶ and BAZNAS's *Majalah Zakat*.⁵⁷ Finally, most zakat agencies' websites also feature zakat news: either original news coverage on zakat payments made to the zakat agency or copy news featured in other newspapers.⁵⁸

In Indonesia, therefore, corporate zakat obligation is a double legal fiction. Its incorporation into the state law is done by assuming a legal person (e.g., *perusahaan* [company]) is the subject of law or *mukallaf* (subject to the rulings of *sharīʿa*) whose obligation to pay zakat. Islamic scholars argue that Islam does not have a legal person concept since there was no precedent for a legal entity, like a company, foundation, and so forth, shielded in Islamic commercial law (*fiqh al-muʿāmalāt*).⁵⁹ The concept of a corporation was utterly absent in the premodern Islamic world. What contemporary jurists proposed as the concept of an Islamic legal person (*shakhshiyya iʿtibāriyya*) is simply the widely accepted western concept of a corporation.⁶⁰ The 2009 Ijtima Ulama decision, which sought to resolve the legal status of corporate zakat obligation, referred to the legal opinion

of Subekti – an Indonesian expert in *hukum perdata* or civil law. As a result, the Ijtima Ulama had his definition of a legal person when framing its argument.⁶¹

Why would the corporate sector of Islamic financial institutions, especially Islamic banking, voluntarily comply with this interpretation of zakat as legal fictions such as corporations? The concept of *sharīʿa* is the key to understanding compliance with a religious duty in Islam. *Sharīʿa* is the whole body of Islamic doctrines. It also encapsulates the modern concept of law, which is derived initially from the Qurʾān and Sunna (the exemplary behavior and statements of the Prophet Muhammad as preserved in authenticated reports about him and his disciples. These reports are called Ḥadīth).⁶² The concept of *sharīʿa*, understood in this way, cultivates a consciousness in Muslims that God has established a body of rules and recommendations on which human salvation depends, as long as believers can identify and obey them.⁶³

According to Vogel, understanding *sharīʿa* as religion and law was preserved in the Muslim world at least until the nineteenth century, when we see the dissolution of the structure of the *sharīʿa* system. It was a period when nearly the entire Muslim world was colonized; the broad sphere of daily life that used to be governed by *sharīʿa* came to be regulated by legal systems foreign to the Muslim world.⁶⁴ Vogel argues that there are five attributes of *sharīʿa* that enabled it in the premodern period to provide Muslims with core religious doctrines and positive law and a legal system. Four of them provide a relevant framework for understanding the conception and implementation of the corporate zakat duty in Indonesian law and comprehend the phenomena of voluntary observance of corporate zakat duty by some companies. These are: first, *sharīʿa* is self-executing, meaning that *sharīʿa* “applies of its force, addressed directly, without an intermediary, to every believing individual. [So when a believing Muslim reads a command about paying zakat in the Qurʾān and Ḥadīth,] she feels bound by that command as if it were addressed directly to her.”⁶⁵ Second, *sharīʿa* is transitive-delegated viz. it is “equally a law, something that the one to whom it is addressed must enforce not only on himself but also on all others over whom he wields legitimate power or influence, often by force.”⁶⁶ This trait of *sharīʿa* may help us to understand why for some Muslims, religion cannot be separated from the state, and thus they demand that the state enforce *sharīʿa*, including in the matter of zakat. Third, *sharīʿa* is textual, meaning that to know what God’s law is on a particular matter “is an exercise not of politics, collective deliberation, or again, of an institution, but of sheer textualist interpretation – an effort to ascertain what is the most likely meaning of the revealed texts.”⁶⁷ This trait of *sharīʿa* may help us to understand why a state’s action in promulgating Islamic law without the involvement of Muslim jurists/ulama during the process is challenged because a legislature is not trained to perform the *ijtihād* (independent discernment of textual meaning), but the Muslim jurist/ulama are.

Fourth, *sharī'a* has a body of thought and practice that engages the state, which is called *siyāsa shar'īyya* (or governance by the state according to the *sharī'a*).⁶⁸

The concept of legal personhood is unprecedented in Islamic law and so is subjecting it to the obligation to pay zakat. However, from the general doctrine of zakat obligation and *siyasa shar'īyya*, and the Zakat Law's implementation, which stipulates *voluntary* zakat payments, how does compliance emerge? As discussed above, *sharī'a* is believed to be self-executing, meaning that *sharī'a* applies its force, addressed directly, without an intermediary, to every believing individual. Thus, when a believing Muslim reads a command about paying zakat in Qur'ān and Ḥadīth, she feels bound by that command as if it were addressed directly to her.⁶⁹ Compliance with corporate zakat obligation, therefore, should be a form of obeisance to God's command. In a more technical explanation, as per Vogel's *Ijtihad as Law*, the *sharī'a* obligation of zakat payment, in general, becomes a binding norm because the knowledge of the law (i.e., the obligation of zakat) is fused with two other elements: one, a particular, concrete context (in this case the individual's action based on a *fatwā* or the *sharī'a* opinion of the Islamic bank's *Sharī'a* Supervisory Board); and two, an act of religious conscience (in this case the religious conscience of the requestor in choosing to comply to the *fatwā* or religious advice).⁷⁰

Conclusion

This chapter's main issue is why corporations pay zakat when they are not legally compelled to do so. The observation starts from the uptrend of corporate zakat payments in general, which has converged on the phenomena of compliance with corporate zakat in Islamic commercial banks. This study finds that although there is an imposition of corporate zakat in the Zakat Law, it has not sparked controversy among Indonesia's business sector. Many of them are not familiar with its provisions because of the voluntary nature of the zakat collection. For example, the government's lack of enforcement by applying sanctions to zakat evaders either as individuals or corporate entities may contribute to "ignorance" toward the concept of corporate zakat. Even though the Zakat Law defines zakat as a religious duty imposed on individuals and legal entities and mentions both as the subject of zakat, its implementation becomes a personal matter. It is usually dependent on the moral or legal conscience of each zakat payer.

Regarding the phenomena of corporate zakat payments in Islamic commercial banks in Indonesia, the large number of ulama members of MUI serve as *sharī'a* advisers in Islamic financial services only has a more negligible effect on the bank's decision to pay their zakat. The status of corporate zakat as an obligation is still contentious among Indonesian Islamic legal thinkers. As a result, the existence of a Zakat Law and a

sharī'a opinion of the *Sharī'a* Supervisory Board has little, if any, influence on the Islamic commercial banks' compliance with corporate zakat (except for the case of BMI). From the banking sector case study, it was found that the views of Islamic commercial banks about the legitimacy of provisions of corporate zakat in Indonesia are affected by a combination of two or three factors: (1) the type of business, i.e., as *sharī'a*-related industries; (2) their attitudes toward the principles of zakat, i.e., an obligation in Islam to purify a Muslim's property; thus, the issue is not whether the subject of zakat is an individual or legal entity; (3) the size of the company, i.e., the amount of profit that is deemed to be eligible to pay zakat; and (4) benchmarking with other competitors. A combination of factors number one and two is the most salient driver for corporate zakat compliance.

Islamic commercial banks that do not yet embrace the *fatwā* resolution on corporate zakat status or its imposition in the Zakat Law feel that corporations do not fall under the corporate zakat requirement's moral authority. Despite this, these banks' employees (and arguably executives) pay their zakat as individuals (zakat on professional income). The banks' zakat unit manages the zakat funds collection and then channeled to BAZNAS or LAZ.

Islamic religious ethics (factors number one and two) appear as the most salient reason for Islamic commercial banks to comply with corporate zakat obligations, and this confirms one of the characteristics of *sharī'a* as self-executing norms. The self-executing norms of *sharī'a* mean that mere injunctions about zakat obligations in the Qur'ān apply of their force and can be addressed directly to every believing person, without the intermediation of *fatwā/sharī'a* opinions or a legal and regulatory framework. Islamic commercial banks' management perceives corporate zakat's novel obligation to fall under the general obligation of zakat imposed on Muslims. So, when the believing decision makers of the Islamic commercial banks are aware of command about paying zakat in the Qur'ān and Ḥadīth, they feel bound by that command as if it were addressed directly to them. Consequently, while the corporations' status as zakat payers may still be debated, individuals' moral conscience tips the scale toward compliance at the management level.

Notes

- 1 Andy Agung Prihatna, et al, *Caring and Sharing: Pattern of Giving in Indonesian Society – Results of Survey in Eleven Cities, 2000 and 2004* (Depok: PIRAC and Ford Foundation, 2005), 9–11.
- 2 There are 846 companies listed as *Sharī'a* Compliant Securities as reported by the *Sharī'a* Advisory Council of the Securities Commission Malaysia in November 2009. This study used around 30% of the total population, viz. two hundred eighty-one companies, using systematic sampling. The logic of 30% is because Malaysia targeted to achieve 30% equity ownership of *Bumiputera* by 2020; Halizah Md Arif, et al., "Factors Influence Company towards

- Zakat Payment: An Explanatory Studies,” *Second International Conference on Business and Economic Research Proceeding*, Langkawi, Kedah, Malaysia (March 14–16, 2011), 2519–2520.
- 3 Arif, *Factors*, 2522.
- 4 Mohd Rahim bin Khamis, et al., “Compliance Behavior of Business Zakat Payment in Malaysia: A Theoretical Economic Exposition,” *Proceeding of 8th International Conference on Islamic Economics and Finance*, Qatar (December 19–21, 2011), 4.
- 5 Patricia Sloane-White, *Corporate Islam: Sharia and the Modern Workplace* (New York, NY: Cambridge University Press, 2017), 160–162; see also Patricia Sloane-White, “Company Rules: *Sharia* and Its Transgressions in the Malay-Muslim Corporate Workplace,” *Journal of Current Southeast Asian Affairs* 37, no. 1 (2018): 89–116.
- 6 See Kerstin Steiner, “‘Unpacking’ a Global Norm in a Local Context: An Historical Overview of the Epistemic Communities That are Shaping the Zakat Practice in Malaysia” in *Law and Development and the Global Discourses of Legal Transfers*, eds. John Gillespie and Pip Nicholson (New York, NY: Cambridge University Press, 2012), 374.
- 7 The government lacks zakat law enforcement makes the zakat implementation mainly depend on the conscience of each Muslim up till now; see Aznan Hasan, “Undang-Undang Pentadbiran Zakat di Malaysia” in *Pentadbiran Undang-Undang Islam di Malaysia*, eds. Mahamad Arifin, et al. (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2007), 253.
- 8 Steiner, *Global Norm*, 374.
- 9 See Appeal Letter of Minister of State Owned Enterprises No. S 701/MBU/2010 concerning Call for Paying Zakat through BAZNAS; see also Joint Agreement Minister of Religious Affairs, Ministry of Finance, Chairman of Indonesian Chamber of Industry No. 17 of 2003, No. 29/KMK.01/2003, No. 001/DP/I/2003 concerning socialization and raising charity in the national business community to improve people’s welfare; and Circular Letter of Minister of Religious Affairs No MA/296/2001 concerning the establishment of zakat collector units in state owned enterprises. Hard copies are available with authors.
- 10 See ANNEX 2 Recapitulation of 2000–2010 Corporate Zakat Payment in Dompot Dhuafa.
- 11 See ANNEX 3 Recapitulation of 2000–2010 Corporate Zakat Payment in BAZNAS.
- 12 Art. 74(1), Law No. 40 of 2007 concerning Limited Liability Company.
- 13 The response letter from Medco Group, dated April 25, 2012. Hard copy is available with author.
- 14 This is what happens when I ask about corporate zakat payments in Rumah Zakat via e-mail. They asked me to see corporate logos on their website. Other zakat agencies such as Baitul Maal Hidayatullah and LAZIS Muhammadiyah did not respond to my e-mail inquiring about corporate zakat payment channelled to them.
- 15 “Penyerahan Zakat Perusahaan ReINDO,” *Badan Amil Zakat Nasional – Berita* 04/17/09, <http://www.baznas.or.id/ind/?view=detail&t=berita&t2=list&id=20090421001> (accessed January 22, 2011); “PT ReINDO Menyalurkan Wajib Zakat Perusahaan kepada Baznas,” *Republika Online* 04/21/09, http://sylviagustin.myrepublika.com/berita/45399/PT_ReINDO_Menyalurkan_Wajib_Zakat_Perusahaan_kepada_BAZNAS (accessed October 14, 2009).
- 16 “BMM Terima Zakat Perusahaan Rp 80 Juta,” *Baitul Mal Muamalat – Berita* 04/09/12, <http://www.baitulmaal.net/berita-382-bmm-terima-zakat-perusahaan-rp-80-juta.html> (accessed June 8, 2012).

- 17 “K-Link Indonesia Serahkan Zakat Perusahaan Melalui BMH,” *Baitul Mal Hidayatullah – Berita*, <http://www.portalbmh.com/profile/145-k-link-indonesia-serahkan-zakat-perusahaan-melalui-bmh> (accessed June 8, 2012).
- 18 “PT EHK Keluarkan Zakat Perusahaan 150 Juta,” <http://www.pkpu.or.id/news/pt-ehk-keluarkan-zakat-perusahaan-150-juta> (accessed June 8, 2012).
- 19 See “Penyerahan Zakat Perusahaan ReINDO,” *Badan Amil Zakat Nasional – Berita* 04/17/09, <http://www.baznas.or.id/ind/?view=detail&t=berita&t2=list&id=20090421001> (accessed January 22, 2011); “PT ReINDO Menyalurkan Wajib Zakat Perusahaan kepada Baznas,” *Republika Online* 04/21/09, http://sylviagustin.myrepublika.com/berita/45399/PT_ReINDO_Menyalurkan_Wajib_Zakat_Perusahaan_kepada_BAZNAS (accessed October 14, 2009).
- 20 “PT Recci Indonesia Salurkan Zakat Melalui Dompot Dhuafa,” www.dompetdhuafa.org/2013/07/10/pt-recci-indonesia-salurkan-zakat-lewat-dompot-dhuafa/.
- 21 “K-Link Indonesia Serahkan Zakat Perusahaan Melalui BMH,” <http://www.portalbmh.com/home/39-bmh-pusat/145-k-link-indonesia-serahkan-zakat-perusahaan-melalui-bmh> (accessed June 8, 2012).
- 22 The interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.
- 23 They are: Chapter 9: 103, and Chapter 2: 267.
- 24 Interviews with BSM *Assistant Vice President Accounting Division*, in Jakarta, on September 30, 2013.
- 25 BSM Annual Report of 2000, 13–14, 20, 30, 36.
- 26 After I explained zakat-related regulation in Indonesia, he confirmed that Law No. 38 of 1999 concerning Zakat Management was also one of the considerations.
- 27 Interviews with BSM *Assistant Vice President Accounting Division*; it is worth noting that, unlike other informants in BSM (and other case studies), the informant was appointed by BSM to answer my question shortly before the interview began. He seems to be very conversant with the corporate zakat process in BSM before the RUPS decision, given that he had not seen my interview guide and abstract in advance.
- 28 The interview with BMS *Corporate Affairs Head*, in Jakarta, on September 17, 2013.
- 29 The interview with BMS *Corporate Affairs Head*.
- 30 The interview with BMS *Corporate Affairs Head*.
- 31 Both are contemporary Muslim jurists whose work on zakat, Islamic jurisprudence (*fiqh*), and Islamic legal theory (*uṣūl al-fiqh*) are heavily referred to by ulama in Indonesia. Yusuf al-Qaradawi was born in Egypt in 1926. He is currently the chairman of the International Union of Muslim Scholars. His main work on zakat is *Fiqh al-Zakāt* (“jurisprudence on zakat”); Wahbah al-Zuhayli was born in Syria in 1932. He is the Chairman of Islamic jurisprudence in the College of *Sharīʿa* at Damascus University. His main work on Islamic jurisprudence is *al-Fiqh al-Islamī wa-adillatuh* (“Islamic jurisprudence and Its proofs”).
- 32 I could not verify this information because there is no written document such as a *sharīʿa* opinion of the BMS’ *Sharīʿa* Adviser just like the case of BNIS. Meanwhile, one of BMS’ *Sharīʿa* Adviser is Maʿruf Amin, who persistently denies that corporations can be the subject of zakat obligation. Thus, I will not consider the informant stated that the decision of BMS to pay zakat is, *inter alia*, because of the *sharīʿa* opinion of its *Sharīʿa* Advisers.
- 33 The interview with BMS *Corporate Affairs Head*.
- 34 There is a misconception among users related to Islamic legal/regulatory products issued by MUI regarding corporate zakat’s obligation. On some occasions, the users, e.g., the BMS informant, stated that it was a *fatwā*,

- whereas our investigation (Chapter 3) has shown that this was still in the form of a decision of the 2009 Ijtimā Ulama. The MUI *Fatwā* Commission has yet to determine the decision as a *fatwā* because many aspects still needed to be assessed from corporate zakat's obligation.
- 35 Interview with BMS *Corporate Affairs Head*.
 - 36 Interview with BRIS *Senior Officer CSR*, in Jakarta, on October 23, 2013. Note: The chief DPS of BRIS is Didin Hafidhuddin, and he is one of the proponents of corporate zakat implementation in Indonesia.
 - 37 The interview with BRIS *Senior Officer CSR*.
 - 38 The interview with BRIS *Senior Officer CSR*.
 - 39 The interview with BRIS *Senior Officer CSR*.
 - 40 The interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*, in Jakarta, on September 17, 2013.
 - 41 The interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*.
 - 42 The interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*. It is worth noting that both informants are from legal and compliance division and their responses were based on legal reasoning.
 - 43 The interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*. This statement is inconsistent with his earlier statement that says that BNIS only refers to the Law 23 in 2011.
 - 44 The *Sharī'a* Opinion of BNIS DPS. Translation by the author; hardcopy available with the author.
 - 45 The interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*.
 - 46 The interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*.
 - 47 See Yusuf al-Qaradawi, *Fiqh al-Zakah (Volume 1)* (Beirut: Mu'assasah al-Risalah, 1984), 521–533.
 - 48 Al-Qaradawi, *Fiqh al-Zakah*, 533.
 - 49 For each ulama biographical details and affiliates, see Table 3.2 in Chapter 3 (Didien Hafidhuddin, Mohamad Hidayat, Hasanuddin, and Ikhwan Abidin), and endnote 15 in Chapter 4 (Syafii Antonio).
 - 50 The interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.
 - 51 The interview with BSM *Assistant Vice President Accounting Division*, in Jakarta, on September 30, 2013.
 - 52 The interview with BMS *Corporate Affairs Head*, in Jakarta, on September 17, 2013.
 - 53 The interview with BRIS *Senior Officer CSR*, in Jakarta, on October 23, 2013.
 - 54 The interview with BPS *Risk Management qua Zakat Operator*, in Jakarta, on September 4, 2013.
 - 55 I acquired this information from a *sharī'a* adviser of BPS who wrote in his social media account about the meeting and one of the decisions, i.e., paying corporate zakat. I then followed up this information through e-mail communication, April 28, 2015.
 - 56 *Info+Z* is a magazine published by the Forum Zakat (FOZ) that serves as a network of information, communication, and advocacy for LAZ and BAZNAS throughout Indonesia to develop zakat, an Islamic charity, and *waqf* in Indonesia. Archives of the magazines are available from www.forumzakat.net or www.asosiasizakat.blogspot.com.
 - 57 Archives available from BAZNAS's website at <http://pusat.baznas.go.id/tag/majalah-zakat>.

- 58 See endnote 14–21 above.
- 59 See Timur Kuran, “The Absence of the Corporation in Islamic Law: Origins and Persistence,” *American Journal of Comparative Law* 53, no. 4 (2005): 785–834; see also Imran Ahsan Khan Nyazee, *Islamic Law of Business Organization: Partnership* (New Delhi: Kitab Bhavan, 2006).
- 60 See Kuran, *The Absence*, 785.
- 61 Majelis Ulama Indonesia, *Keputusan*, 55.
- 62 Frank E. Vogel, “Shari’a as Law and Legal System: Changing Perceptions,” in *The 6th Farhat J. Ziadeh Distinguished Lecture in Arab and Islamic Studies, The Department of Near Eastern Languages and Civilization at the University of Washington* (May 6, 2008), 5; see also Norman Calder, “SHarīa,” in *Encyclopaedia of Islam, second edition*, ed. P. Bearman, Th. Bianquis, C. E. Bosworth, E. van Donzel, and W. P. Heinrichs. Brill, 2010. Brill Online. University of Washington – LIBRARIES. http://www.brillonline.nl.offcampus.lib.washington.edu/subscriber/entry?entry=islam_COM-1040.
- 63 Calder, “SHarīa”; Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Sharia into the Egyptian Constitutional Law* (Leiden and Boston, MA: Brill, 2006), 12.
- 64 Vogel, *Shari’a*, 6.
- 65 Vogel, 8.
- 66 Vogel, 9.
- 67 Vogel, 10.
- 68 Vogel, 15.
- 69 Vogel, 8.
- 70 Frank E. Vogel, *Islamic Law in the Modern World: The Legal System of Saudi Arabia* (Leiden: Brill, 1999), 21; Cf. Mark F. Massoud and Kathleen M. Moore, “Shari’a Consciousness: Law and Lived Religion among California Muslims,” *Law and Social Inquiry* 45, no. 3 (online first 2020): 1–31; Tamir Moustafa, “Islamic Law, Women’s Rights, and Popular Legal Consciousness in Malaysia,” *Law and Social Inquiry* 38, no. 1 (Winter 2013): 168–188.

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6 COMPLIANCE WITH CORPORATE ZAKAT

RESPONSES TO BUREAUCRATIZATION OF ZAKAT

As we saw in [Chapter 5](#), Islamic Commercial Banks' decisions to pay corporate zakat are not based on the provisions regarding corporate zakat in the Zakat Laws and the *fatwā* or *sharī'a* opinions of the banks' *Sharī'a* Supervisory Board. The legitimacy of the interpretation and imposition of corporate zakat is not an issue in Indonesia's implementation. However, another aspect of its implementation, that is, channeling the corporate zakat collected, needs to be examined since it is closely related to how the state intervened in the zakat administration.

Zakat administration by the state in Indonesia is a late development compared to the initial demands for its introduction that stretch back to the 1950s or even earlier.¹ After the New Order regime collapsed in the late 1990s, the government is now managing zakat in Indonesia by issuing the Zakat Law and related regulations. The state finally accommodated the demands of some Muslims in Indonesia in 1999 through the promulgation of Law No. 38 of 1999 concerning Zakat Management. Despite being regulated by the state, Indonesia adopted a voluntary system of zakat payment, which was at odds with proponents of the state administration of zakat. If we compare this to other zakat payment systems in Muslim countries, Indonesia's position is not novel.

Predominantly, Muslim countries take a wide variety of approaches to zakat, and these can be grouped into three categories. First, some countries have no government system for zakat, and this is the most common approach. Second, we can identify countries where zakat payment is voluntary: the government facilitates the collection and distribution of zakat in the interest of transparency and accountability with varying degrees of governmental oversight and involvement. Bahrain, Bangladesh, Egypt, Iran, Jordan, Kuwait, Lebanon, and the United Arab Emirates adopt this system. Third, we have countries where zakat is mandatory: zakat is treated as a tax and distributed as an analog to welfare, while zakat evasion is punishable with fines and/or imprisonment. Countries with this system are Libya, Malaysia, Pakistan, Saudi Arabia, Sudan, and Yemen.²

The replacement of Law No. 38 of 1999 with Law No. 23 of 2011 prompts us to re-examine the state's authority to regulate and manage zakat in

Indonesia. Even though the legislature did not accept the government's proposal (the Ministry of Religious Affairs) to introduce a mandatory zakat payment in the new law,³ the government did succeed in reaffirming its role as the zakat administrator in Indonesia. According to the new Zakat Law, to carry out zakat management, that is, collection and distribution, in Indonesia, the government will set up state-run zakat agencies (*Badan Amil Zakat Nasional* [BAZNAS]) at all levels, from the national to local levels (provinces and districts/cities) as well as zakat collector units (*Unit Pengumpul Zakat* [UPZ]) in either subdistricts/villages or government agencies and private companies (art. 5(1), 16(1)). Meanwhile, the roles of existing nonstate-run zakat agencies (*Lembaga Amil Zakat* [LAZ]) are now subordinate to BAZNAS, and there are rigorous requirements to maintain their authorized status as zakat collectors or to establish a LAZ (art. 17–20). The new Zakat Law also penalizes unauthorized zakat collectors who collect, distribute, or utilize zakat funds by prescribing imprisonment and/or monetary fines for offenses (art. 38, 41).

By adopting the voluntary system of zakat payment in Indonesia, individuals and legal entities as zakat payers (*muzakkī*) must pay zakat because of religious obligation. However, it stipulates criminal provisions for unauthorized zakat collectors who accept zakat payments and distribute the proceeds. This change, however, does not affect the corporate zakat payers themselves. Some companies have voluntarily paid their corporate zakat, although they are not legally compelled to do so, and that from an Islamic jurisprudence perspective, its obligatory status is not resolved. The legislation's design creates tension between nonstate zakat collectors (LAZ) and the state-sponsored collector (BAZNAS) because both compete for influence and maintain their rights in zakat management. We have seen earlier how according to Fauzia, the history of the zakat collection, including other types of Islamic charity in Indonesia, is marked by an ongoing dialectic between the prerogative of religiosity and secular state power and between individual spirituality and the interest of the public.⁴ The realm of public life and the state have furthermore been the sites of continuing contestation in modern times between Muslim civil society groups *vis-à-vis* the government (the Ministry of Religious Affairs, or MORA), Islamist, and revivalist groups who want to impose formal Islamic law and those who want to maintain the secular state.⁵

The LAZs then demand recognition from the state by enabling and facilitating Zakat Law provisions so they would be able to participate in the development of zakat in Indonesia fully. This tension finally came to the Constitutional Court's fore as a petition to annul the 2011 Zakat Law's discriminative provision against LAZs (see [Chapter 4](#)). Although state involvement in zakat management is not novel in Islamic history (to some extent, it is even encouraged by the doctrine of zakat according to an interpretation), it is interesting to understand the LAZs' perspective on this issue, especially when the state positions itself as the regulator and

the collector of zakat. As we will see, it seeks to dominate the collection of zakat.

This chapter examines where Islamic commercial banks should distribute their corporate zakat: do they directly distribute it to zakat beneficiaries or channel their zakat payments through zakat collector agents? We can infer the subjects' views on government intervention in administering zakat in Indonesia from channeling preferences. Also, the use of corporate zakat funds is now included in the Islamic commercial banks' Good Corporate Governance report, especially in the section of the company's social activity or corporate social responsibility (CSR). The existence of laws and regulations that enables and facilitates the administration of zakat, such as providing tax deduction, tax credit, or cashback on corporate zakat paid for corporate social activities or CSR, has an additional stimulus for Islamic financial institutions that have not decided to pay corporate zakat. Then, whether the law and regulation of zakat administration in Indonesia are already enabling and facilitative toward corporate zakat payers?

Before we assess how this zakat bureaucratization is perceived by Islamic commercial banks when channeling their corporate zakat, this chapter will briefly discuss the origin and development of zakat agencies in Indonesia. This discussion is necessary to comprehend better the current "tug of war" between the state, represented by the MORA and BAZNAS, and some sections of the society over the zakat collection in Indonesia.

Zakat Agencies' Platform under Indonesian Law and Regulations

The Qur'ān as the major source of *sharī'a* has outlined that zakat must be distributed to the groups of beneficiaries called *asnāf*. There are eight groups of such people: the poor (*al-fuqārā'*); the indigent/the needy (*al-masākin*); zakat collectors (*al-ʿāmilīn ʿalayh*) "those whose hearts have been reconciled to the truth," such as new converts to Islam (*al-muʿallaf*); those in bondage/slaves (*al-riqāb*); those in debts (*al-ghārimīn*); those in the cause of God/those going to war (*fī sabīlillāh*); and wayfarers (*ibn al-sabīl*).⁶

Zakat may be paid directly to one or more of these beneficiaries or paid through an intermediary zakat collector (*al-ʿāmilīn ʿalayh*). These two channels of zakat payment co-exist throughout the history of zakat payments in Indonesia. The direct payment method may have been practiced since Islam came to the archipelago in the 13th century. This practice was coupled with "state" institutionalization during the Islamic city-states and monarch's eras before the 19th century. In the 17th century, the Sultan of Aceh followed the Ottoman and Mughal empires in separating zakat between the private and public realms, where rulers have the right to

collect zakat only on agricultural and trade items. Simultaneously, for other possessions such as gold or silver, the collection was left to be carried out privately by Muslims.⁷

During the Dutch colonial administration in the 18th and 19th centuries, the practice of zakat and Islamic charity (*sedekah* and *infak*) was left to local Muslim leaders and religious teachers' patronage.⁸ The religious leaders collected and distributed zakat and then used zakat funds for the people's education and welfare and the armed struggle against the Dutch colonization. Knowing the great consequence of zakat funds for its authority, the Dutch administration halted this practice by taking effective control of zakat institutions. The political aim of Dutch control over zakat was to take financial resources away from Indonesian Muslims and weaken the struggle against colonization. Thus, the zakat's personal character continued and was supported by the Dutch colonial administration under its secular policy.⁹

The use of intermediaries as permanent zakat agents marked modern zakat management in Indonesia, which began before independence in the early 20th century. Muhammadiyah, the second-largest socioreligious organization established in 1912, created nonprofit and charitable institutions that act as a collector and a beneficiary of zakat, an Islamic charity, and *waqf* (Islamic trusts). Muhammadiyah successfully produced modern educational institutions, hospitals, and orphanages that mainly operated without government intervention.¹⁰ On the other hand, zakat collection and distribution continued at a local community basis, that is, with religious leaders and teachers as the agents, and maintained by a traditionalist movement represented by one of the largest Muslim organizations, Nahdlatul Ulama (est. 1926). In Java, for example, when Javanese Muslims paid zakat, the most notable usage of the funds was for building mosques and *madrasah* (Islamic schools).¹¹

After the declaration of independence in 1945, the state's zakat involvement began to take an active role, especially under the New Order regime. President Suharto demanded that Muslims introduce state-based zakat agencies and government regulations on zakat and Islamic charities. He thus appointed himself as the agent of zakat (*al-ʿāmilīn ʿalayh*) and instructed his ex-military governors to establish an organizational apparatus for the nationwide zakat collection through the issuance of Presidential Decree No. 07/PRIN/10/1968. The Presidential Decree gave impetus to incorporating zakat into the responsibilities of the state.¹² The governor of Jakarta, Ali Sadikin, was the first official to implement the Presidential decree by issuing a gubernatorial decision to establish a semi-autonomous zakat agency, namely, Zakat and Islamic Charity Management Agency (*Badan Amil Zakat, Infak dan Sedekah* [BAZIS]), in December 1968.¹³ East Kalimantan formed its BAZIS in 1972, followed by West Sumatra in 1973, West Java and South Kalimantan in 1974, and North Sulawesi and South Sulawesi in 1985.¹⁴

Besides provincial-government-owned BAZIS, community-based BAZIS also started to grow in this period. The community-based BAZIS was usually established by activists of mosques or groups of Islamic learning, except Dompot Dhuafa, set up in 1993 by *Republika*. This national newspaper promotes an Islamic-oriented voice, with the Association of Indonesia Muslim Intellectuals (*Ikatan Cendekiawan Muslim Indonesia* [ICMI]). These include Yayasan Dana Sosial Al-Falah of Al-Falah Mosque of Surabaya in 1987, Lembaga Wakaf dan Zakat Salman of Salman Mosques of Bandung Institute of Technology in the 1980s, and Dompot Sosial Ummul Quro of Ummul Quro study group of Bandung in 1998 (the Dompot Sosial Ummul Quro is the origin of *Rumah Zakat*, one of the largest nonstate zakat management agencies in Indonesia).¹⁵

The government then issued regulations to supervise and guide the work of BAZIS through the joint ministerial decisions of the Minister of Religious Affairs and Minister of Home Affairs in 1991. BAZIS as the platform for zakat payment intermediation did not last long because of its lack of legal basis and unclear guidance for establishing and, thus, supervising nongovernmental BAZIS. As a result, the nongovernmental BAZIS has been subject to multiple government agents' channels in licensing and overseeing.¹⁶

After the fall of Suharto's regime in 1998, zakat management became more institutionalized in greater government involvement. The state finally promulgated a law in 1999 that regulated zakat management, that is, collection and distribution, including its organizations. The law promised enhanced direction and accountability to zakat collection in Indonesia as it required balance auditing and annual reports to the government and public disclosure. Regarding the zakat agencies' platform, the Law officially covers both the semigovernmental collector agencies (Badan Amil Zakat [BAZ]) and nongovernmental ones (LAZ). The state then instituted BAZNAS in 2001 as the highest body in the organizational structure of the semigovernmental zakat collector and regional zakat agencies in every provincial and city/regency level (in some areas even to the subdistrict level depending on the performance of the local office of the Ministry Religious Affairs known as Kantor Urusan Agama or KUA).¹⁷

The nongovernmental zakat collectors also mushroomed after the fall of Suharto's era. Thus, most of Indonesia's current major LAZs were born before the Zakat Management Law of 1999. Fauzia, who specifically studies the history of BAZ and LAZ, found that two factors contribute to the rapid growth of zakat collectors during this period. The first is external causes, that is, the global phenomena of the rise of Islamic economies from the 1980s¹⁸ and, most importantly, concerns for Muslims' plight in Afghanistan, Palestine, and Iraq that prompted the creation of committees for political and humanitarian action. The second is external causes, which have been triggered by the *Reformasi* movement (i.e., the democratic reform movements as well as the emergence of mass organizations following the fall of

Suharto in 1998), the subsequent economic crisis, ethnic and religious conflicts such as those in Ambon and Poso, and the tsunami disaster of Aceh in 2004.¹⁹ We see that zakat agencies' essential names were established in this period following their compatriot Dompot Dhuafa, which was established during BAZIS's platform. These include Pos Keadilan Peduli Umat (PKPU) on September 17, 1998 (which is affiliated with Partai Keadilan Sejahtera), Rumah Zakat on July 2, 1998, and Dana Peduli Umat Daarut Tauhid on June 16, 1999 (Daarut Tauhid is the Islamic Boarding School led by well-renown Islamic preacher Aa' Gym).²⁰ Large Islamic organizations such as Muhammadiyah finally set up their LAZ known as LAZIS Muhammadiyah on July 14, 2002; Pusat Zakat Umat of Persis (Persatuan Islam) in 2001 Dewan Dakwah Islamiyah Indonesia or DDII LAZIS Dewan Dakwah in 2002. Even the traditionalist Muslim group, Nahdhatul Ulama, at last, created their LAZ, called LAZIS NU, in 2004.

This fast growth was then soon followed by rivalry between the government (the MORA) and its zakat collector agencies (BAZ) *vis-à-vis* the nongovernmental zakat collector agencies (LAZs), which was a proxy for the dispute on the appropriate role of the state in zakat management in Indonesia. This polemic started following the Zakat Law's deliberation in 1999 and became more heated during the Zakat Law amendment from 2010 to 2011.²¹ After the Zakat Law's replacement in 2011, the platform for zakat agencies became BAZNAS²² and LAZ. Community groups can set up a LAZ, provided that permission is obtained from the Minister of Religious Affairs. The Minister will grant the permission when the following requirements are met: *first*, the LAZ is registered as an Islamic social organization that manages education, propagation, or social programs in the Ministry of Internal Affairs; *second*, it has a legal entity (usually a foundation); *third*, it must secure a recommendation from BAZNAS; *fourth*, it has a *Shari'ah* Supervisory Board; *fifth*, it is not-for-profit oriented; *sixth*, its programs orient to Muslim well-being; *seventh*, it is willing to be audited, both *shari'ah* and financial; *eight*, it has technical, administrative, and financial ability to function.²³

The LAZ zakat stakeholders are different ideological groups within Islam: modernists such as Muhammadiyah, Islamists such as LAZ Salman Mosque, and revivalists such as Dompot Dhuafa and PKPU. They all advocated for state involvement in zakat management. However, they differ when it comes to the appropriate role of the government. The Islamists and the MORA want to have full implementation by the state in which the government acts as the leading collector. However, the modernists and revivalists reject government domination in zakat collection and distribution and want the government to focus on regulation.²⁴ This polemic peaked with a judicial review request to the Constitutional Court led by Dompot Dhuafa. The petition to the Court exemplifies the revivalist group's resentment toward the government, for they believe they have played a significant role in modernizing zakat management in Indonesia,

including proposing the draft of zakat law in 1999 and 2011 and the establishment of BAZNAS, which was prepared by Republika, Dompot Dhuafa, the Association of Zakat Agencies (Forum Zakat [FOZ]), and the MORA.²⁵

The amendment debate and the law significantly impact NGOs' zakat collector agent's development in Indonesia. The marginalization of the LAZs' role by the MORA has prompted major LAZs such as Dompot Dhuafa to transform themselves into humanitarian foundations in general. By doing so, they survive the threat of the government and harsh competition among zakat collector agents. Being a general foundation is better than being a regular LAZ because it allows fundraising for any cause, including zakat. The other two large LAZs then followed this step, that is, PKPU and Rumah Zakat, especially when they were aware of the impact of the MORA's proposal on the existing LAZs. In November 2011, Dompot Dhuafa launched its own LAZ called LAZ Dompot Dhuafa. The most successful transformation, according to Fauzia, is Rumah Zakat, as it now has three institutions: a corporate foundation, a zakat collecting body, and a humanitarian organization. Their fast growth is due to the CSR contributions of non-religious corporations.²⁶

The intermediaries in zakat management are then broken down into three types, based on the organization of zakat collectors, that is, zakat committees (*panitia zakat*); BAZNAS (the state-run zakat collector agency) including its zakat collector unit (UPZ); and LAZs (NGO-run zakat collector agencies). There are no reliable figures regarding BAZNAS and LAZs. By 2007, there were 1001 BAZs, according to the Directorate of Zakat of the MORA. The data may only reflect the BAZs that were formally created but not ones that are actively functioning. According to FOZ, an unofficial umbrella organization for zakat agencies in Indonesia, there are only about 300 active BAZs and 73 LAZs by 2007. The relatively small number of LAZs is caused by the strict regulations set by the MORA; furthermore, many large zakat agencies do not seek formalization from the MORA or provincial governments; examples would be the LAZ of Al-Markazy mosque in South Sulawesi, the LAZ of Istiqlal mosque in Jakarta, and the LAZIS Paramadina in Jakarta. The establishment of a LAZ is encouraged by modernist and revivalist Muslims, whose vision is to Islamize society, and this includes having zakat laws implemented by the state. Now, three groups of modern institutions became the basis for establishing LAZ: Islamic institutions, (secular) corporations, and financial institutions. The Islamic institutions include Islamic schools (e.g., Al Azhar), Islamic parties (e.g., Welfare-Justice Party [PKS]), religious study groups (e.g., Pengajian Al Falah in Surabaya), and mosques. The secular corporations include PT Pupuk Kaltim, PT Pertamina, and PT Garuda Indonesia. The financial institutions include BNI, BRI, Bank Muamalat, and Bank Syariah Mandiri (BSM).²⁷

Channels of Corporate Zakat Payment

Bank Muamalat Indonesia

My interview with two senior officers of Bank Muamalat Indonesia's (BMI) finance and strategy division reveals that all BMI's corporate zakat funds are delivered to the BMI's zakat collector agency called Baitulmaal Muamalat (BMM).²⁸ BMM was initially a unit established by BMI in 1994 to manage its zakat and charity funds (*infak* and *sedekah*) and its benevolence funds (*qard al-ḥasan*).²⁹ On June 16, 2000, the Minister of Religious Affairs inaugurated BMM as a national zakat collector agency (LAZ), and on December 22, 2000, BMM acquired its legal status as a foundation (Yayasan BMM).³⁰

Because BMM was set up to be the caretaker of BMI's zakat and other social funds, this became the reason for channeling all BMI's corporate zakat to BMM.³¹ BMI channels corporate zakat to BMM and zakat of BMI's employees, third-party zakat and charity (*infak* and *sedekah*), and social funds (fines, non-*ḥalāl* income).

When asked whether BMI controls BMM in utilizing the corporate zakat funds under BMI's mission, the informant said that BMM is independent in managing the funds. As a particular unit with its legal entity, BMM's financial reports are not consolidated with BMI. BMM has an account in BMI, so every zakat and Islamic charity transaction goes to BMM. According to the informants, "outsiders see BMM as identical to BMI [...], but they are independent in day-to-day operational matters; there is no influence from BMI to channel the funds [corporate zakat], [although] informal talk maybe [happen]."³²

Bank Syariah Mandiri

According to the Head of the Corporate Secretary and Legal division, BSM also delivers all of its corporate zakat funds to its zakat collector agency called LAZ BSM.³³ LAZ BSM is built³⁴ "of course to channel BSM zakat," said the informant. Under the zakat management law, LAZ BSM had a *yayasan* (foundation) legal status called Yayasan Bangun Sejahtera Mitra Umat or Yayasan BSM Umat. (The "BSM" in LAZ BSM stands for *Bangun Sejahtera Umat* and is not the abbreviation of the bank's name.) The informant said, "we purposefully sought the foundation name in line with BSM [the bank's name]; Yayasan BSM Umat was set up by BSM management because there is a need to manage BSM's zakat payment; we need a zakat agency."³⁵

The corporate secretary and legal division are the division that deals with corporate zakat policy. The informant explained how his division manages corporate zakat in detail and BSM's relationship with LAZ BSM. According to the informant, after the ASGM authorized BSM's plan to

pay corporate zakat, the funds are not directly transferred to LAZ BSM. The Corporate Secretary will make a memo to the Board of Directors, confirming the proposal of channeling the funds through LAZ BSM. The memo is based on the proposal of use made by LAZ BSM. When the memo is agreed by the Board of Directors and sent to the corporate secretary, the corporate secretary will memo to the accounting division to disburse the fund through LAZ BSM.

Programs put forward by LAZ BSM in its proposal are examined beforehand by the Yayasan BSM Umat. A delicate “intervention” by BSM to LAZ BSM occurs at this stage, as senior management of BSM sits in the *Yayasan* organizational structure. Two BSM directors (Hanawijaya and Zainal Fanani) serve as the Advisory Board of the *Yayasan*, and the informant himself is the secretary. Hence, when the Board of Directors of Yayasan BSM Umat organizes a meeting, they call LAZ BSM into the meeting to report their work on zakat collection and distribution to BSM. As mentioned, there are multiple roles assumed by the BSM above senior management. However, in the community, LAZ BSM is more recognized than the Yayasan BSM Umat because they are the agent of zakat; thus, policies and programs of LAZ BSM are regarded independently taken by its management.³⁶

According to BSM values, the informant further explains how BSM makes sure that LAZ BSM utilizes its zakat. He then referenced a speech of BSM CEO (Yuslam Fauzi) in his own words as follow:

LAZ BSM should support BSM business. If I make an analogy, it is like *muḍāraba muqayyada* (a restricted profit-and-loss sharing venture).³⁷ Many [zakat agencies] need BSM zakat funds, which is part of BSM’s way to educate LAZ BSM personnel to work more professionally. Just because they have sustainable and enormous charitable funds from their BSM, they can work carelessly. Other zakat agencies seek funds; hence, LAZ BSM should make the proposal or a well-considered proposition for using the funds. LAZ BSM then proposes social entrepreneurship programs. This is how they interpret the CEO’s instruction, i.e., maintaining the eight zakat beneficiaries (*asnāf*) and help BSM’s interest. BSM channels its zakat to LAZ BSM not in vain (*tidak asal buang*). They must support BSM’s business. BSM could channel to other agents since the annual shareholders’ general meeting never dictates where to channel.³⁸

As a nationwide zakat collector agency, LAZ BSM also collects charities from other corporations or the society, but their funds mostly come from BSM. It happens that other zakat agencies seek funds from BSM, and in this case, the corporate secretary will direct them to LAZ BSM. There is already a partnership among BSM and other zakat agencies with regards to zakat fund distribution.³⁹

Bank Mega Syariah

In my interview with Bank Mega Syariah's (BMS) corporate affairs Head, I discovered that BMS does not have its zakat collector agency. Thus, it channels its corporate zakat to some zakat agencies authorized by the government.⁴⁰ According to the informant, corporate zakat channeling is a matter of trust: "If we believe in other agencies, why not?" Channeling zakat to zakat agencies also abides by government regulation, added the informant.⁴¹ The informant confirmed that BMS restricts the beneficiaries of its corporate zakat (*zakat al-muqayyād*) when channeling the zakat to some partner institutions, such as the Al Azhar Education Foundation Indonesia. The Al Azhar foundation program is assisted by BMS corporate zakat, but the corporate zakat is still distributed through a zakat agency in order for the payment to be eligible for a tax deduction. He also confirmed that the benefits of BMS corporate zakat flow back to its employees, for example, in the form of scholarships for children of low-level employees such as drivers, office boys, security, and helpers.⁴²

Interestingly, BMS did not care about the LAZ's corporate zakat distribution report, even though BMS has restricted its corporate zakat fund's beneficiaries. The reason is "zakat [is meant] for the purification [of BMS wealth] so when we have paid zakat [our obligation to God is fulfilled], we let the funds go [without the desire to know where they are spent]."⁴³

Bank Rakyat Indonesia Syariah

Bank Rakyat Indonesia Syariah (BRIS) Senior Officer CSR says BRIS delivered its corporate zakat to BAZNAS, which transfers the funds to BAZNAS from a BRIS current account (*giro*).⁴⁴ When asked why it all goes to BAZNAS, the informant said that BRIS has an agreement with BAZNAS in which every payment of zakat will be made to BAZNAS, and in return, BAZNAS will issue the Zakat payer Identification Number (*Nomor Pokok Wajib Zakat* [NPWZ]) for BRIS employees and for the BRIS entity, which will be used to claim tax deductions.⁴⁵

Regarding zakat and Islamic charity, BRIS is a zakat collector unit (UPZ) of BAZNAS. However, there is no specific organization set up by BRIS for the UPZ since all funds are transferred to BAZNAS.⁴⁶ It is worth noting that BRIS's owner, Bank Rakyat Indonesia [BRI], has its national zakat agency, and this LAZ has acquired the status of an official charitable organization from the General Directorate of Tax of the Ministry of Finance, in which case zakat paid to its LAZ can be deducted from a zakat payer's gross income. Despite this, there is no statement from the interview that may imply that BRIS wants to establish its LAZ.

When asked what happens if BRIS wants to use its corporate zakat funds for BRIS's social program, the informant said BRIS would ask for the money from BAZNAS. He added that BRIS does not ask for all of

the corporate zakat that has been paid to BAZNAS since BRIS has other sources of funds such as *qard al-ḥasan* (benevolence fund) and Islamic charity (*infak* and *sedekah*). “We have more freedom to use this kind of funds,” added the informant. BRIS corporate zakat also benefits its low-level employees; for example, “If we have a severely ill employee whose medical bill is not covered by the health insurance, we will refer him/her to BAZNAS [for assistance].”⁴⁷

The informant admitted that it is administratively complicated to channel corporate zakat to BAZNAS while BRIS has its social programs. BAZNAS wants to be consistent with the traditional zakat beneficiaries (eight *asnāf*), while BRIS’s social programs may not match the *asnāf* according to BAZNAS. As a result, the fund is not always available when the program is about to be executed. This situation made some top management upset, and one even said, “Never mind, we will not pay our zakat to BAZNAS anymore; this is our money.” When I asked why BAZNAS rejected the BRIS proposed program, the informant replied that it might be because it is for social purposes in general.⁴⁸

Bank Negara Indonesia Syariah

In my interview with the Bank Negara Indonesia Syariah (BNIS) Head of Legal, Compliance, and Secretariat division and one of the senior staff,⁴⁹ I learned that BNIS has a zakat collector unit (UPZ) established and its spin-off from BNI in 2010.⁵⁰ Although BNIS does not have a corporate zakat fund yet, the UPZ is needed to manage zakat paid by BNIS employees⁵¹ and customers and Islamic charity (*infak* and *sedekah*) and endowments paid through BNIS. The UPZ officially received BAZNAS confirmation on August 30, 2010. The UPZ’s initial formation consists of a chairperson, secretary, treasurer, and program manager. The UPZ is a unit separate from BNIS. Its staff is appointed from outside BNIS, except for the chairman.⁵²

Despite BAZNAS’s confirmation for the institution of a BNIS UPZ, the UPZ was not affiliated with BAZNAS for the period 2010–2011. The informants said, “We manage [zakat funds and Islamic charity] by ourselves; as far as I am concerned, there was no requirement to channel [zakat funds and Islamic charity] to BAZNAS before 2011.”⁵³

After promulgating the new zakat management law in 2011, the UPZ is now affiliated with BAZNAS, but BNIS still manages its zakat. According to the informants, the relationship with BAZNAS is simply for a UPZ chairman and staff appointment since the law requires this. Consequently, any BNIS social program funded with corporate zakat funds must be approved by BAZNAS. The informant said:

Now we are in the process of negotiation [...] well that is not the correct term, [we are in the process of] reaching “harmony” (*mencapai*

keharmonisan) for the utilization of corporate zakat funds. We are committed that the utilization of zakat is for beneficiaries mentioned in Qurʾān [i.e., the *asnāf* or the eight groups of beneficiaries], but we want to deliver it to the beneficiaries through our programs. With this design, BAZNAS needs to approve the programs.⁵⁴

BNIS was committed to BAZNAS initially because the regulation said so, and “we feel comfortable with BAZNAS.” The UPZ also channels BNIS employee zakat funds to LAZ, but BNIS corporate zakat is channeled to BAZNAS. When asked about BNIS’s corporate zakat’s beneficiaries, the informants said that BNIS wants to be consistent with the provision of *asnāf* in the *fiqh* of zakat. Some of the corporate zakat funds also go back to employees, especially for helpers like office boys or the cleaning service: “When they get sick, and they do not have health insurance [they will be assisted with the funds]; their children can get scholarships, [the funds also go to the] chauffeurs, among other things, [but it is] a tiny part.”⁵⁵

Corporate Responses to Zakat Bureaucratization

Due to resistance from several traditional zakat collectors toward government plans to fully manage zakat funds through the state-sponsored zakat collector agency during the discussion of the Zakat Law bill in 1999 (which was repeated in 2011), the government implemented a dual track in the collection of zakat, namely, through the BAZ and LAZ. Like the voluntary zakat collection policy, the dual-track policy also does not influence individual zakat payers’ choice to disburse their zakat through the BAZ or a LAZ that they trust. The Public Interest Research and Advocacy Center (PIRAC) survey on the potential and reality of zakat in 2004, which is meant to update and compare the findings from 2000 (ten cities with 1936 respondents), reveals that the considerable potential of zakat is not yet well managed, as only 12.5% of zakat funds have been collected, distributed, and utilized by the BAZ or LAZ. There was a lack of trust toward zakat agencies. Findings from Semarang, Manado, and Balikpapan reveal that LAZ did not enjoy any public trust at all.⁵⁶

In 2007, the PIRAC survey shows that people’s awareness and capacity to pay zakat went up significantly from 49.8% in 2004 to 55% in 2007, partly thanks to Law No. 38 of 1999. This figure is followed by compliance with zakat duty by the zakat payers, as 95.5% of respondents fulfilled their obligation. Like the 2004 survey, most respondents (95%) channeled their zakat through zakat committees in their neighborhood mosques; only 1.2% of respondents channeled their zakat through zakat agencies. According to Fauzia, this suggests that the state’s zakat management is not resisted but is not favored.⁵⁷ The 2004 figure by UIN Jakarta – a policy paper “*Islamic Philanthropy for Social Justice*” by Pusat Pengkajian Islam dan Masyarakat (PPIM), a well-renowned research center of Islam in Indonesia and

Southeast Asia, which is based on a clear distinction between zakat *fitriah* (alms tax due to every *Eid-ul-Fitr* festival) and zakat on income is more realistic and shows an increase in zakat payment. Zakat is claimed to be paid by 35% of Muslims who are economically stable. It also shows that 45% of Muslims claimed to pay their zakat and zakat *fitriah* directly to beneficiaries (including local religious leaders), and 51% paid through zakat committees in neighborhoods and mosques. Only 5.4% of Muslims claimed to pay their income zakat or zakat *fitriah* to BAZNAS or LAZs. These findings suggest that neither LAZ nor BAZNAS are yet to be accepted by most Muslims in Indonesia.⁵⁸

Despite the findings above, the existing legal basis for zakat management in Indonesia fueled the birth of new zakat agents, which compete to maximize the potential of zakat funds in public and then distribute to beneficiaries and utilize them productively. The government also provides incentives for BAZNAS and LAZ's existence by issuing regulations authorizing 19 zakat agents as official counters where zakat payers, both corporate and individual, are entitled to a reduction in their taxable income when they channel their zakat here.⁵⁹ They are LAZ Dompot Dhuafa, LAZ Yayasan Amanah Takaful, LAZ PKPU, LAZ BMM, LAZ Yayasan Dana Sosial Al Falah, LAZ Baitul Maal Hidayatullah, LAZ Persis, LAZ Yayasan Baitul Maal Umat Islam PT BNI, LAZ BSM, LAZ DDII, LAZ Yayasan Baitul Maal BRI, LAZ BMT, LAZ DPU Daarut Tauhid, LAZ Yayasan Rumah Zakat Indonesia, LAZIS Muhammadiyah, LAZIS Nahdlatul Ulama, and LAZIS IPHI.⁶⁰

This arrangement, however, is insufficient for corporate zakat payers' condition, predominantly Islamic commercial banks. Corporate zakat payers are different from individual zakat payers in terms of payment flexibility. If individual zakat payers can directly distribute their zakat with the cost of losing their tax deduction opportunity, the law prevents Islamic commercial banks from distributing their zakat. Before promulgating special laws that regulate *sharī'a* banking, Islamic commercial banks could directly distribute the zakat funds they receive (either from banks, employees, customers, and the community) to the beneficiaries. When Law No. 21 of 2008 concerning Islamic Banking was passed, this social function of Islamic banks – namely, in the form of *Baitu-l-māl* (treasury house for zakat and Islamic charity) – is restricted by a provision that requires Islamic banks to distribute these funds through the zakat collector agencies (art. 4 (2)). Moreover, the Central Bank of Indonesia issued a regulation on Islamic banks' obligation to report "Sources and Uses of Zakat and Islamic Charity Funds." The only option for Islamic commercial banks is to channel their corporate zakat payment to zakat collector agencies, either BAZNAS or LAZ.

As the most regulated industry by the government, the distribution of corporate zakat by Islamic commercial banks to the zakat collector agencies, that is, BAZNAS and LAZs, is based on the rules that require

them to do so with the aim of good corporate governance. It can be said that concerning banking and *sharī'a* banking, Islamic commercial banks acknowledge the state's role in the administration of zakat in Indonesia, especially for regulation and supervision. However, there is reluctance on the side of corporate zakat payers, predominantly Islamic commercial banks, from the aspect of collection and distribution since this is related to the role of BAZNAS as the coordinator of zakat collector agents in Indonesia. An individual zakat payer can directly distribute their zakat to assist eligible close relatives or neighbors to become zakat beneficiaries. Corporate zakat payers such as Islamic commercial banks can also do so through zakat payments to a zakat collector agent with designated beneficiaries (*zakat muqayyad*). In practice, Islamic commercial banks in Indonesia often tie their corporate zakat payments to their vision and mission using the company's CSR programs. BSM, for example, states:

We want BSM to be sustainable, and so does the BSM Zakat Agency through the program, which synergizes with BSM core values but still within the eight [categories of zakat beneficiaries] *asnāf* that are in line with BSM business. BSM wants to build a positive image in the community through corporate zakat, and the operator is the BSM Zakat Agency, and it has a *Sharī'a* Supervisory Board to make sure its programs comply with *sharī'ah*.⁶¹

Similarly, BRIS says:

CSR has a campaign element, but we do not deny the need for the campaign. CSR is CSR, and corporate zakat is on the other end; when the convergence happened [between CSR and corporate zakat], that is not something made up. For example, when BRIS assists social activity, and people know that it is from BRIS, this recognition is not because we [held such activity]. When it is zakat funds, we are not setting up [people's perception]. Nevertheless, if we use CSR funds, we shape [people's awareness]; a case in point, we conduct free medical treatment or provide basic food during the opening of BRIS's new branches. [We] are making sure that people know that BRIS organizes such activities.⁶²

Islamic commercial banks, which already have their own LAZ (i.e., BMI and BSM) – long before the polemics of government domination through BAZNAS in zakat management as well as the moratorium on authorizing new LAZs by the MORA – had no problems with having to distribute corporate zakat through zakat collector agents. Both can even take advantage of this situation to align their social activities with their vision and mission that may eventually strengthen their brand and image in the community (see the case studies of BMI and BSM above).

Suppose an Islamic commercial bank does not have its zakat collector agency (LAZ) or only has Zakat Collector Units' status (UPZ) of BAZNAS. In that case, it will be difficult for them to finance their CSR programs by using their corporate zakat funds because they have to get approval from BAZNAS for their proposed zakat utilization. There are problems related to BAZNAS's role as coordinator of the collection and distribution of zakat due to the transfer of corporate zakat funds to the account of BAZNAS before being utilized by the Islamic commercial bank itself for their social programs. They then have to propose these social programs to BAZNAS for approval and funding support. BAZNAS has its criteria for distributing zakat funds, namely, consistent with the traditional conception of *asnāf*. Thus, the social program of an Islamic commercial bank does not likely gain the approval of BAZNAS because it does not meet the *asnāf* criteria (as in the case study of BRIS), or the funds were not disbursed by BAZNAS even when social programs are ready to be executed. It is worth noting that BRIS's owner, Bank BRI – a state-owned conventional bank – has its LAZ, which acquires tax-deductible status. However, BRIS channels its corporate zakat to BAZNAS, which at the moment is chaired by its *sharī'a* adviser, Didin Hafidhuddin.

Another case in point is BNIS, whose shares are held entirely by a conventional bank with its own LAZ, namely, Bank Negara Indonesia or BNI. By assessing the informants' responses, it can be assumed that this bank desires to have its LAZ. However, this aspiration is limited because the MORA created a moratorium on new endorsements for LAZ.⁶³ It is administratively cumbersome for this bank to use its zakat funds for its social programs when it does not have a LAZ and is just a Zakat Collector Unit (UPZ) of BAZNAS. The ideal corporate zakat management for this bank is to have the funds held by the UPZ. The funds do not need to be transferred to BAZNAS, so when the bank requires the funds, there is no need to propose programs to BAZNAS in advance.

However, it was only until 2016 when the BAZNAS finally regulated the relationship between BAZNAS and its UPZs regarding zakat distribution share as per BAZNAS regulation Number 2 the Year 2016 (hereinafter Perbaznas No. 2/2016). Article 35(3-4) of the Perbaznas No. 2/2016 states that a UPZ may help BAZNAS distribute and utilize 70% of collected zakat when needed. For UPZs established in mosques or government/business offices' mosques, they may help distribute and utilize 100% of the funds (art. 35(5)). The funds may be distributed and utilized by UPZ at the latest five working days after deposit in the BAZNAS account (art. 35(6)). Moreover, they have to propose their UPZ Work Plan and Annual Budget (*Rencana Kerja dan Anggaran Tahunan* or RKAT) to BAZNAS to be eligible to assist BAZNAS (art. 42). Still, the deposit requirement of corporate zakat collected by UPZ to BAZNAS has been criticized by the Islamic Commercial Banks because it is too impractical

to implement in their social programs. Thus, the bureaucratization of zakat has been viewed unfavorably by the Islamic banking industry due to the inadequate corporate zakat share between the banks' zakat agencies and BAZNAS.

Besides, introducing the obligation of corporate zakat into Indonesian law without enforcing it can confuse the concept of zakat as alms-tax with the concept of charity or philanthropy. Consequently, in the case of Islamic Commercial Banks that only have UPZs but did not rule out the possibility of those with LAZ, zakat is regarded as their assets instead of the beneficiaries' rights. They perceive that they maintain the rights to distribute the corporate zakat funds and utilize them for their social programs at their wish.

This situation is further exacerbated by the lack of understanding of the concept of philanthropy and zakat by Zakat Agencies as per Retsikas's anthropological study on zakat in Indonesia. According to Retsikas, zakat agencies set the trend of having their staff consistently communicate zakat's obligation by using English loan words and mainly through the term's charity (Indonesian: *cariti*) and philanthropy (Indonesian: *filantropi*). Retsikas criticizes the trend as showing a lack of understanding of the concepts of philanthropy and zakat. The former has a strong sense of volunteerism and connotes the rich's benevolence in an era of extreme inequality. The concept was born through the conception of property as individual rights, which entails the forfeit of the object given. Meanwhile, zakat is obligatory and is established based on a different conception of property and rights attaching to it. The beneficiary of zakat is not a recipient but a person entitled to that wealth. A wealthy person in Islam can enjoy rights of possession and disposal of wealth legitimately only after a set of portions has been duly transferred to its rightful owner.⁶⁴

Miscommunicating zakat this way to zakat-savvy potential payers may make them lose trust in zakat agencies. Consequently, the zakat payer wants to distribute their zakat to their designated beneficiaries directly. For example, the BPS informant stated that he would not distribute BPS corporate zakat to BAZNAS or LAZ as the caretaker of zakat in his bank. Instead, he will distribute it through the UPZ owned by BPS due to issues of *sharī'a* compliance that the informant saw surrounding the management of zakat throughout zakat collector agents in Indonesia. He was opposed to the way most of the zakat agents have been campaigning for zakat awareness; that is, it was more about selling it as a form of poverty-alleviation rather than as an obligation in Islam.

On a practical level, this misperception of corporate zakat funds as the payers' own has been shaped by the lack of accounting standards for corporate zakat within Islamic commercial banks in Indonesia. Existing accounting standards for corporate zakat adopted by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) or the Malaysian Accounting Standards Board (MASB) are not compatible with the genuine zakat concept in Islam. Accounting standards have

treated zakat assets and zakat paid by business organizations as one of some “expenses” in a company’s income statement.⁶⁵ Even though Islamic commercial banks, as it turns out, do not follow any given accounting standard in calculating their corporate zakat due, each bank has classified corporate zakat as nonoperational expenses in their report to the Central Bank.⁶⁶

According to Adnan and Bakar, treating zakat as an expense is against the concept of ownership in Islam, where zakat’s obligation is laid down. The absolute property owner is God; the zakat payer is entrusted with the property because of her fruitful labor. Also, there is a right of the poor and in that property. Hence, zakat payments should be treated as a dividend, instead of as a nonoperating expense because “dividend” is the closest item category available in the present financial statement which conveys the purpose of zakat payment, that is, “to fulfill one’s obligation towards the real owner of wealth by delivering the trusted wealth to the designated categories of people.”⁶⁷ This miscategorization on some Islamic commercial banks (BRIS, BNIS, and BPS) explains their expressed apprehension (as seen above) regarding BAZNAS’s rejection of their proposal for their corporate zakat fund utilization as they feel that the zakat paid is *theirs* to give.

Table 6.1 is a summary of where eight Islamic commercial banks channel their corporate zakat. Data are compiled from interviews and archival records.

Table 6.1 Channels for Islamic Commercial Banks’ Corporate Zakat

No	Bank	Zakat collector status	Channel	Appropriate state role	
				State intervention	BAZNAS as the coordinator
1	BMI	LAZ	BMM (mostly) and other zakat agencies	Yes	N/A
2	BSM	LAZ	LAZ BSM (mostly) and other zakat agencies	Yes	N/A
3	BMS	None	LAZ and BAZNAS	Yes	N/A
4	BRIS	UPZ	BAZNAS	Yes	Yes, with notes
5	BNIS	UPZ	BAZNAS	Yes	Yes, with notes
6	BPS	UPZ	N/A	Yes	No, including LAZ
7	BSB	UPZ	N/A	Yes	Yes, receive more than channeled to BAZNAS (in case zakat in general)

Source: Compiled from interviews, banks’ documents, and archives (Annual Shareholders General Meeting Decisions; Financial Reports; Good Corporate Governance Reports; Annual Reports).

Conclusion

This chapter's main issue is where the Islamic commercial banks pay their corporate zakat: do they directly distribute it to the zakat beneficiaries or channel their zakat payment through zakat collector agents? The observation began with the exposition of the zakat management platform under the law and regulation in Indonesia. The state implements a dual platform in zakat collection and distribution in Indonesia to balance the demand for state intervention in zakat administration and the people's rights in zakat administration. Thus, we have the National Zakat Agency (BAZNAS) and nongovernmental zakat agents (LAZ) as per the Zakat Law No. 38 the Year 1999, which Zakat Law No. 23 the Year 2011 replace.

However, existing zakat laws and regulations have subjected zakat agencies set up by NGOs (LAZ) to multiple government agents' licensing and overseeing channels. To establish a LAZ, an NGO must first acquire a recommendation from BAZNAS and authorization from the Ministry of Religious Affairs. The NGO-run zakat agency (LAZ) must have a legal person status in the form of a foundation. Once the foundation is set up in the Public Notary using the deed of establishment, it must be gazetted in the Ministry of Law and Human Rights. The LAZ must also acquire Islamic mass organization (*Ormas Islam*) from the Ministry of Internal Affairs. When finally, the LAZ runs its business, it will undergo a financial audit by a Public Accountant that must be reported to Baznas and the audit of *sharī'a* compliant aspects of their business by the Ministry of Religious Affairs.

Given this process, the state exercises deep involvement in zakat management as most zakat stakeholders in Indonesia requested. The effect of this, however, is the diminishment of social participation in the process. Moreover, this sort of bureaucratization has been regarded unfavorably by the Islamic commercial banks in Indonesia when channeling their corporate zakat payments. Islamic commercial banks have to channel their corporate zakat funds to the National Zakat Collector Agency (BAZNAS) or a nongovernmental zakat collector agency (LAZ). An Islamic commercial bank cannot directly distribute its corporate zakat funds since BAZNAS and LAZs are the official platforms for zakat collection and distribution in Indonesia under Zakat Law No. 23 of 2011. An Islamic commercial bank must use this zakat intermediary to not conflate zakat with its core business as a financial intermediary as per the Islamic Banking Law No. 21 of 2008.

However, there are reservations among some Islamic commercial banks that do not have their LAZ regarding BAZNAS's role as the collector of zakat (BRIS, BNIS, and BPS). BAZNAS requires all corporate zakat funds to be transferred to BAZNAS's account before being utilized by the banks for their social programs. From the case studies, it turns out that the ideal method of corporate zakat collection for Islamic commercial banks which

do not have a LAZ is that the banks retain the proceeds and report the number of proceeds for the given year to BAZNAS. Thus, based on this finding, the government should reconsider its position as the sole regulator-cum-collector of zakat in Indonesia. Empirical evidence on concerns on those entities subject to corporate zakat regarding the government's domination in zakat administration should inform the government how to tackle the unintended effects and inefficiencies caused by Islam's bureaucratization in Indonesia.

Notes

- 1 In 1951, the Ministry of Religious Affairs (MORA) issued a circular letter No. A/VVII/17367, dated December 8, 1951, stating that the MORA will not interfere with the zakat administration (so the government continued the Dutch colonial policy on zakat in Indonesia). Instead, the MORA encouraged Muslims to observe their religious obligation to pay zakat and ensured the zakat was distributed correctly under *sharī'a*. This circular letter arguably was issued in response to state intervention demands for the zakat administration in Indonesia. Andi Lolo Tonang, "Beberapa Pemikiran tentang Mekanisme Badan Amil Zakat," in *Zakat dan Pajak*, ed. B. Wiwoho (Jakarta: PT Bina Rena Pariwara, 1992), 268.
- 2 Russell Powell, "Zakat: Drawing Insight for Legal Theory and Economic Policy for Islamic Jurisprudence," *University of Pittsburgh Tax Review* 7 (2009–2010): 58–73.
- 3 This resembles Law No. 38/1999 when the legislature also believed that the state does not have authority to enforce a belief to its Muslim citizens.
- 4 Amelia Fauzia, *Faith and the State: The History of Islamic Philanthropy in Indonesia* (Leiden: Brill, 2013), 259.
- 5 Fauzia, *Faith*, 259.
- 6 Qur'ān, Chapter IX: 103.
- 7 Fauzia, *Faith*, 260.
- 8 See Arskal Salim, *The shift in Zakat Practice in Indonesia: From Piety to an Islamic Socio-Political Economic System* (Chiang Mai: Silkworm Books, 2008), 18–19.
- 9 H. Aqib Suminto, *Politik Islam Hindia Belanda: Het Kantoort voor Inlandsche Zaken* (Jakarta: LP3ES, 1985), 163–164.
- 10 Fauzia, *Faith*, 261; see also Deliar Noer, *The Modernist Muslim Movement in Indonesia 1900–1942* (Kuala Lumpur: Oxford University Press, 1973), 75, 78–80, 83.
- 11 See Mohammed Ariff, "Resource Mobilization through the Islamic Voluntary Sector in Southeast Asia" in *Islam and the Economic Development of Southeast Asia: The Islamic Voluntary Sector in Southeast Asia*, ed. Mohamed Ariff (Singapore: ISEAS, 2003), 33; Taufik Abdullah, "Zakat Collection and Distribution in Indonesia," in *Islam and the Economic Development of Southeast Asia: The Islamic Voluntary Sector in Southeast Asia*, ed. Mohamed Ariff (Singapore: ISEAS, 2003), 54; Rachmat Djatnika, *Tanah Wakaf* (Surabaya: Al-Ikhlās, 1982).
- 12 See Abdullah, "Zakat Collection," 51, 80.
- 13 See M. Dawam Raharjo, *Perspektif Deklarasi Makkah: Menuju Ekonomi Islam* (Bandung: Mizan, 1987), 190–197.
- 14 Ariff, "Resource," 34; Raharjo, *Perspektif*, 189.
- 15 Fauzia, *Faith*, 225–226.

- 16 Alfritri, "The Law of Zakat Management and Non-Governmental Zakat Collectors in Indonesia," *International Journal of Not-for-Profit Law* 8, no. 2 (2006), 59–60.
- 17 Alfritri, "The Law," 61.
- 18 About extensive history of Islamic economy movement in Indonesia, see Shofwan Al Banna Choirruzad, "More Gain, More Pain: The Development of Indonesia's Islamic Economy Movement (1980s–2012)," *Indonesia*, no. 95 (2013).
- 19 See Fauzia, *Faith*, 215–218.
- 20 Fauzia, *Faith*, 218.
- 21 See Chapter 4 for details; see also in Fauzia, *Faith*, 248–256; Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), 130; Tim Lindsey, *Islam, Law and the State Volume I: Indonesia* (London, I.B. Tauris, 2012), 166.
- 22 All government-run zakat agencies are called BAZNAS, whether at the national (BAZNAS Provinsi) or local (BAZNAS Kota/Kabupaten) level.
- 23 See art. 18 of Law No. 23 of 2011 concerning Zakat Management.
- 24 See Fauzia, *Faith*, 218.
- 25 The interview with Arifin Purwakananta, Director of Dompot Dhuafa, in Jakarta, March 16, 2012; the interview with Prima Hadi Saputra, Managing Director of LAZ Dompot Dhuafa, in Jakarta, March 16, 2012; the interview with M. Sabeth Abilawa, General Manager Social Development of Dompot Dhuafa, in Jakarta, March 16, 2012.
- 26 Fauzia, *Faith*, 255–256.
- 27 Fauzia, *Faith*, 224–225.
- 28 The interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.
- 29 Islamic banks have social funds originated from non-*halāl* income such as penalty, fines, and so forth.
- 30 See "Selayang Pandang," *Baitulmaal Muamalat*, <http://baitulmaalmuamalat.org/about/overview/> (accessed April 11, 2015).
- 31 The informant: "it is our own anyway (*punya sendiri kok*)," Interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.
- 32 The interview with BMI *Finance and Strategy Division*.
- 33 Interviews with BSM *Head Division of Corporate Secretary and Legal*, in Jakarta, on September 30, 2013.
- 34 LAZ BSM originated from the Islamic charity event of an Islamic spirituality activity unit (Badan Amal Zakat or BAMAZ) run by Muslim employees of Bank Susila Bhakti (a conventional bank jointly owned by the Employee Welfare Foundation of Bank Dagang Negara, a government-owned bank, and Mahkota Prestasi LLC). When the government merged its four banks (Bank Dagang Negara, Bank Bumi Daya, Bank Exim) became Bank Mandiri following the 1998 financial crisis, Bank Susila Bhakti, which also suffered from the crisis, was acquired by Bank Mandiri on July 31, 1999. Bank Mandiri then converted Bank Susila Bhakti to a *sharī'a*-based bank on November 1, 1999, and named it BSM. Along with this development, BAMAZ has also transformed itself into a foundation, namely, Yayasan Bangun Sejahtera Mitra Umat (YBSM Umat), on November 21, 2001. BSM then made YBSM Umat be the manager of the zakat (Lembaga Amil Zakat or LAZ) in the environment of BSM, given considerable zakat potency in BSM (corporate, employees, and customers). On September 17, 2002, LAZ BSM was inaugurated by the Minister of Religious Affairs to become a nationwide zakat collector agency. In 2011, it acquired a charitable organization from the General Directorate of Tax of the Ministry of Finance whereby zakat paid to LAZ BSM can be deductible from a zakat payer gross income

- (Peraturan Direktur Jenderal Pajak Nomor PER-33/PJ/2011). To fulfill the requirement of new zakat law, that is, LAZ must be a registered social organization (*ormas*) and have a foundation legal status, LAZ BSM acquired the *ormas* status from the Ministry of Justice and Human Rights in 2012 as well as notary deed of establishment as a *yayasan* on January 4, 2012. See “Profile – LAZNAS BSM,” *Bank Syariah Mandiri*, <http://www.syariahmandiri.co.id/en/category/csr/laznasbsm-csr/> (accessed April 11, 2015); website LAZ BSM: <http://www.laznasbsm.or.id/>.
- 35 Interviews with BSM *Head Division of Corporate Secretary and Legal*, in Jakarta, on September 30, 2013.
 - 36 Interviews with BSM *Head Division of Corporate Secretary and Legal*.
 - 37 “An agreement whereby a capital provider restricts the utilization of his/her funds by an entrepreneur according to the specified time, types of business, business place or types of services.”
 - 38 Interviews with BSM *Head Division Corporate Secretary and Legal*, in Jakarta, on September 30, 2013.
 - 39 Interviews with BSM *Head Division Corporate Secretary and Legal*.
 - 40 The interview with BMS *Corporate Affairs Head*, in Jakarta, on September 17, 2013.
 - 41 The interview with BMS *Corporate Affairs Head*. The informant, however, did not elaborate his statement, but as mentioned earlier, Islamic banks must deliver zakat, Islamic charity, and other social funds to zakat agencies.
 - 42 The interview with BMS *Corporate Affairs Head*.
 - 43 The interview with BMS *Corporate Affairs Head*. It was after 2013 that BMS start paying attention to where its corporate zakat disbursed by reading closely the report and planning the subsequent year’s distribution accordingly.
 - 44 The interview with BRIS *Senior Officer CSR*, in Jakarta, on October 23, 2013.
 - 45 The interview with BRIS *Senior Officer CSR*.
 - 46 The interview with BRIS *Senior Officer CSR*.
 - 47 The interview with BRIS *Senior Officer CSR*.
 - 48 The interview with BRIS *Senior Officer CSR*.
 - 49 The interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*, in Jakarta, on September 17, 2013.
 - 50 The interview with BNIS *Head* and a senior staff of *Legal, Compliance and Secretariat Division* in Jakarta, on September 17, 2013.
 - 51 This zakat on income of the employees is levied through payroll system.
 - 52 The interview with BNIS *Head* and a senior staff of *Legal, Compliance and Secretariat Division* in Jakarta, on September 17, 2013.
 - 53 The interview with BNIS *Head* and a senior staff of *Legal, Compliance and Secretariat Division*.
 - 54 The interview with BNIS *Head* and a senior staff of *Legal, Compliance and Secretariat Division*.
 - 55 The interview with BNIS *Head* and a senior staff of *Legal, Compliance and Secretariat Division*.
 - 56 See, for example, Kurniawati (ed.), *Kedermawanan Kaum Muslimin: Potensi dan Realita Zakat Masyarakat di Indonesia Hasil Survei di Sepuluh Kota* (Jakarta: Pirmedia, 2004).
 - 57 Fauzia, *Faith*, 243.
 - 58 Fauzia, *Faith*, 243.
 - 59 Peraturan Direktur Jenderal Pajak No. PER – 15/PJ/2012 tentang Perubahan Peraturan Direktur Jenderal Pajak No. PER – 33/PJ/2011 on the Agency/ Institution established or approved by the Government Defined as Zakat or Donation Recipient compulsory religious who can deductible from gross income.

- 60 Fauzia, *Faith*, 243.
- 61 Interviews with BSM *Head Division Corporate Secretary and Legal*, in Jakarta, on September 30, 2013.
- 62 The interview with BRIS *Senior Officer CSR*, in Jakarta, on October 23, 2013.
- 63 Interview with Secretary BAZNAS, October 4, 2013. The informant stated that the moratorium was created in early 2009 due to the following reasons: (1) the government wants to review the effectiveness of the current LAZ; there are many LAZ now; consequently, welfare beneficiaries are at stake because zakat is used to run a charity organization; (2) changes in charity legislation that is being proposed; (3) many social organizations build charity organizations but for political purposes.
- 64 Konstantinos Retsikas, "Reconceptualising Zakat in Indonesia: Worship, Philanthropy, and Rights," *Indonesia and the Malay World* 42, no. 142 (2014): 350–351, 355.
- 65 Muhammad Akhyar Adnan and Nur Barizah Abu Bakar, "Accounting Treatment for Corporate Zakat: A Critical Review," *International Journal of Islamic and Middle Eastern Finance and Management* 2, no. 1 (2009): 40.
- 66 Eric Nurcahyo Atmahadi, "Analisis Perlakuan Akuntansi Zakat Perusahaan pada Bank Syariah di Indonesia," Unpublished Undergraduate Final Paper, Faculty of Economics, Universitas Indonesia, (2013), 58–63.
- 67 Adnan and Bakar, "Accounting," 40.

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7 COMPLIANCE WITH CORPORATE ZAKAT

ISLAMIC ETHICS AND CORPORATE SOCIAL RESPONSIBILITY PRACTICES

This chapter looks at the approach adopted by Islamic commercial banks to finance their corporate social responsibility (CSR) programs. In [Chapter 5](#), we saw that religious factors (zakat as an obligation in Islam and the nature of a *sharī'a* related industry) had influenced most Islamic commercial banks in complying with their corporate zakat duty, despite its ambiguous status in Islamic law in Indonesia.

The idea of CSR has become popular among corporations in Indonesia recently. Based on the survey on corporate giving conducted by Public Research and Advocacy Center (PIRAC) in 2002, 57% out of 226 corporations surveyed in 10 major cities in Indonesia recognized that corporations have a social responsibility.¹ However, CSR is still often viewed as a set of philanthropic acts or cause linked to marketing efforts or public relations. One out of five companies surveyed implement CSR as part of the company or their products' promotion activities.²

In 2013, PIRAC again researched "Corporate Philanthropy Trends in Indonesia" by analyzing the content of corporate philanthropy activities published by fourteen newspapers and fourteen online media outlets. The research reveals that corporate philanthropy has been growing considerably in that study's last year, with recorded donations by PIRAC and Dompot Dhuafa amounting to 8.6 trillion IDR or approximately 718 billion IDR per month. Four-hundred and fifty-five companies made these contributions in order to support 1856 social programs. Unlike the earlier 2001 and 2002 studies, this significant development is influenced by increasing awareness among corporations in implementing CSR programs and CSR becoming a core part of business activities. Publications on donations made are always tied to companies' CSR activities. As with previous studies, many corporations do not own a sustainable CSR program because most contributions were incidentally and in response to requests (61%), while routine programs comprised only 38% of CSR activities and contributions.³

CSR's popularity among corporations in Indonesia is partly triggered by CSR provisions in Indonesian laws and regulations. Law No. 40 of 2007 concerning limited liability companies introduced a mandatory corporate

social and environmental responsibility (CSER) concept. The CSER provision is stipulated in art. 74(1–3) of Law No. 40 of 2007:

- 1 Companies running their business activities in the field and/or associated with the natural resources are required to implement the social and environmental responsibility.
- 2 Social and environmental responsibility as referred to in paragraph (1) is the liabilities of company budgeted and accounted for as expenses of the company, and its implementation is done with due regard to decency and fairness.
- 3 Companies that do not carry out the obligations referred to in paragraph (1) shall get sanctions per the law's provisions.

Earlier, the government has introduced a mandatory CSR concept when promulgating Law No. 25 of 2007 concerning Capital Investment. Article 15(b) of Law No. 25 of 2007 stipulates that every investor must carry out CSR.

Before enacting the laws, there were debates in Indonesia about whether CSR's nature is merely voluntary or whether it could be mandatory through legal enforcement. The government finally adopted the mandatory CSER concept when enacting Law No. 40 of 2007. Those who opposed the mandatory concept came from business associations led by the Indonesian Chamber of Commerce and Industry (Kamar Dagang dan Industri Indonesia [KADIN]). They subsequently submitted a petition to the Constitutional Court on the constitutionality of mandatory CSER in art. 74(1–3). The Constitutional Court, however, turned down their petition arguing that mandating CSER is the legal policy of legislators to prevent further social and environmental damage caused by the corporations' work in natural resources exploration, which has been carried out without due attention to the social and environmental impacts of their activities.⁴ Natural exploitations have caused a loss, especially for local communities and the environment in general. Setting CSER as a legal obligation is also a way for the government to encourage companies to participate in the people's economic development. This legal policy is consistent with the Constitution, especially art. 33(3)–(4) concerning natural resources management controlled by the state and used for the people's greatest prosperity, based on a principle of fairness and efficiency.⁵

Mandatory CSER is only required for companies that run their business in natural resources exploration/exploitation in Indonesia. When these companies are state-owned enterprises (*Badan Usaha Milik Negara*, herein-after BUMN), their CSR program includes partnership programs between BUMNs and small enterprises and BUMNs' environmental development programs. These programs are usually reported and communicated to the public as part of BUMN's CSR. None of the Islamic commercial banks are state-owned enterprises, although three are majority-owned by state-owned

enterprise banks (viz., BM owns Bank Syariah Mandiri [BSM]; BNI owns Bank Negara Indonesia Syariah [BNIS], and BRI owns BRIS). Since Islamic commercial banks' business is not in natural resource exploration/exploitation and none of them are BUMNs, will Islamic commercial banks commit to run CSR programs without corporate zakat obligation?

Zakat (almsgiving) is originally an obligation for individual Muslims. When the novel interpretation of *sharī'a* expands the obligation to corporations, which are also committed to implementing CSR, how does this happen in practice? There is only anecdotal evidence of overlapping principles between corporate zakat and CSR in Islamic Financial Institutions (IFI). Theoretically, it is problematic because of the different values underlying zakat and CSR, namely, Islamic versus secular ethics, as some IFI practitioners perceive. When IFI pays their corporate zakat, do they deem the zakat paid to be part of their CSR funds or budget for it separately? How this distinction affects the implementation of the IFI's social programs? This chapter further investigates the factor of Islamic religious ethics (factors number one and two) to understand the context that led to Islamic commercial banks' decision to adopt specific approaches in financing their CSR programs: whether to affirm or negate the overlap between corporate zakat funds and CSR funds. Using case studies of corporate zakat payments and CSR implementations within Indonesia's Islamic commercial banks, this study reveals the empirical result of the fusion between zakat and other Islamic charities and CSR with all its attendant consequences.

Islamic Banking, Social Failure, and CSR

Along with the increasing popularity of the concept of CSR within business practices, the contribution of religions and their values to ethical business practices has become an important topic to be investigated. William and Zinkin find that organized religions, including Islam, have contributed considerably to individual values and attitudes in doing business.⁶ However, they acknowledge that more research is needed to understand whether the attitudes are translated into behaviors. Some religions, especially Islam or Hinduism, exhibit different attitudes toward others depending on whether the other is of the same religion or not. Do the differences in attitudes influence the behaviors of people running the firm directly in doing ethical business? Further, what are the implications for business and policy in the area of CSR?⁷

In Indonesia, the world's most populous Muslim country, the idea of CSR has recently become popular among corporations⁸ including among IFI. As part of their *sharī'a* corporate governance, Islamic commercial banks, for example, have to report the sources of their non-*ḥalāl* income, social lending (*qard al-ḥasan*) as well as Islamic almsgiving (zakat) and charitable contribution funds (aka Zakat, *Infak*, and *Sedekah* funds, hereinafter ZIS funds). These funds are utilized for social activities and are usually reported

in Good Governance reports concerning social funds or CSR reports. The ZIS funds, non-*ḥalāl* income funds, and *qarḍ al-ḥasan* funds, therefore, have become the sources of CSR funds for Islamic commercial banks together with a separate CSR fund, which is explicitly budgeted by the management from the banks' profit. However, the separate CSR fund is not budgeted by all companies because mandatory CSR is only required by the law for companies running their business activities in the field of or associated with natural resources.⁹ Besides, the ZIS funds, non-*ḥalāl* income funds, and *qarḍ al-ḥasan* funds are not as flexible as the separate CSR fund in their utilizations because the beneficiaries of the former, especially non-*ḥalāl* incomes and zakat, have been limitedly dictated by *sharī'a*. Simultaneously, CSR programs may cover a broad range of social activities that a company may regard as in line with its vision and mission. Given the popularity of CSR implementation,¹⁰ the increasing trend of corporate zakat payment within Indonesia's Islamic commercial banks, and its potential to become a fixed source of funds for their CSR programs, do banks regard corporate zakat as a source of CSR funds or do they budget them as separate categories? What are the reasons for their stand on this issue? How does this distinction affect the implementation of the banks' social programs?

An investigation into this matter is necessary because Islamic banking is based on moral foundations that distinguish it from conventional banking. Some argue that because of its foundation in Islam, the former should exhibit a more morally attractive alternative than the latter. Nevertheless, evidence shows that this is not the case; unethical trends in product innovation, such as replicating conventional banks' debt-like financial instruments instead of developing the profit-and-loss-sharing modes required by *sharī'a*, prevail within IFI across various jurisdictions.¹¹ Asutay (2012a) and Khan find that debt-like financing, especially *murābaha* contract (the contract of mark-up sale with installments), dominates Islamic banking balance sheets in major IFI industry countries like the Gulf states, Malaysia, and Pakistan in the last decade. For instance, Bank Islam Malaysia relied heavily on *murābaha* in 2006, which amounts to 90% of its asset side.¹²

Meanwhile, the percentage share of Malaysian IFI's equity-based and risk-sharing financing (*mushāraka* and *mudāraba*) declined from 1.4% in 2000 to 0.2% in 2006.¹³ The prevalence of such debt-like financings as *murābaha* has been criticized because they may open the door for trading interest-bearing financial modes, which is unethical according to the objectives of *sharī'a* (*maqasid al-sharī'a*). The participatory modes of financing (*mushāraka* and *mudāraba*) better fulfill the *maqāsid al-sharī'a* of IFI because the reward is based on participation.¹⁴

Coupled with the negligible level of social lending (*qarḍ al-ḥasan*) in IFI,¹⁵ the current practice of IFI has prevented them from achieving their stated goals to enhance justice, equitability, and social well-being.¹⁶ In addressing this social failure of IFI, Asutay suggests that IFI engage

more actively on ethical investments by, *inter alia*, pro-actively developing their understanding of CSR. According to Asutay, IFI's perception of CSR remains within the framework of zakat distribution and other non-systemic charitable activities rather than building capacity for community development.¹⁷ Thus, this chapter illustrates how Islamic banks' understanding of CSR evolves, especially on the sources of CSR funds. Most importantly, it seeks to provide alternative evidence on how Islamic banks deal with the so-called ethical and social failure in doing their business. Their compliance with corporate zakat is seen as enhancing perceptions of justice, equitability, and social well-being among their stakeholders by incorporating corporate zakat proceeds and other Islamic charities into their CSR programs.

Despite its ambiguous status in Islamic jurisprudence and Indonesian law, some Indonesian companies have observed paying corporate zakat. Hence, uncovering Islamic Commercial Banks' motives when complying with this legal fiction is worth scrutinizing because of the prevailing anecdote on the overlapping utilization between corporate zakat funds and CSR funds from a perspective of Islamic business ethics proposed by some Muslim businessmen in the *sharī'a* financial service industry.¹⁸ They responded to the polemic following the promulgation of the business legislation package in 2007 that introduced mandatory CSR in Indonesia. These Muslim businessmen seek to prove the compatibility between the concept of mandatory CSR and Islamic teachings, primarily through the promulgation of corporate zakat – a novel philanthropic product imposed on Islamic corporations in the form of a religious obligation to pay alms by 2.5% of their profit. The business sector's objections against mandatory CSR are unacceptable given the evolving relationship between business and human rights.¹⁹ If the business sector resorts to Islamic teachings, they added, the concept of corporate zakat will pacify their rejection against the mandatory CSR because corporations are listed as the zakat payers in Indonesian law; thus, corporate zakat may become the company's CSR.²⁰ However, do Indonesia's Islamic commercial banks share this perception?

Maṣlaḥa-cum-maqāṣid as an Ethical Framework for Implementing CSR

The prominence of *maqāṣid al-sharī'a* (the objectives of *sharī'a*) as IFI ethical framework cannot be overstated. Major studies on Islamic banking and finance have set the *maqāṣid al-sharī'a* as the ethical basis for assessing the *sharī'a* compliance of IFI's economic as well as social performance.²¹ Given the social failure of IFI, Asutay thus suggests IFI take a lesson from conventional CSR implementation to deal with the social failure.²² Dusuki and Abdullah observe that often the practice of CSR is unable to run effectively and efficiently, primarily when corporations use CSR as

trade-offs for social and environmental damages caused by their business operations. There will be a conflict of interests and expectations among the corporation, its shareholders, society, and government that further prevents CSR initiatives.²³ According to Dusuki and Abdullah, obstacles to CSR initiatives are generated by the lack of moral and ethical grounding when carried out as a trade-off.²⁴

For IFI, Dusuki and Abdullah thus propose an Islamic perspective on the implementation of CSR, which is guided by *maṣlaḥa* (public interest, well-being, or welfare) and *maqāṣid al-sharīʿa* as the foundation. In most theological schools in Islam, human reasoning alone cannot determine what is beneficial (*maṣlaḥa*) and harmful (*mafsada*); it can play a role only in a framework guided by *sharīʿa*.²⁵ Based on the classical Islamic legal theory developed by al-Ghazali (d. 1111) and al-Shatibi (d. 1388),²⁶ the constituent elements of *maṣlaḥa* are divided into three types, namely, the essentials (*ḍarūriyya*), which constitutes the core objective (*maqāṣid*) of the *sharīʿa* as revealed in Islam; the complementary requirements (*hājiyya*), and the (nonessential) “embellishments” (*tahsiniyya*).²⁷ The *maṣlaḥa*-cum-*maqāṣid al-sharīʿa* consists of five essential elements, namely, to safeguard the faith of people, their lives, their intellect, their posterity, and their wealth.²⁸ All of these five core objectives are intended to promote the welfare of human beings.²⁹ According to Opwis, the conception of *maṣlaḥa* as the purpose of God’s law, which is tied to the safeguarding of five tangible criteria above, was a significant development in the history of Islamic legal theory, and these constituent elements of *maṣlaḥa* did not change after al-Ghazali.³⁰ That said, this chapter employs the classical conception of *maṣlaḥa*-cum-*maqāṣid* when analyzing the approach adopted by Indonesia’s Islamic commercial banks in Indonesia when financing their CSR programs and the implications of such approach.

To the proponents of *maṣlaḥa* as the moral and ethical ground of CSR, the concept may serve as a framework for making decisions and a mechanism for adapting to change. It also offers moral judgment guidelines on managers and other stakeholders when solving conflicts during pursuing CSR. *Sharīʿa* has an explicit codification defining what permissible (*ḥalāl*) is and what forbidden (*ḥarām*) is. It also has a self-enforcing mechanism³¹ for individuals and the community, because of the salvific aspects at stake for believers, as per the Qurʾān 17: 13 “Everyman’s fate we have fastened to his neck: On the Day of Judgement, we shall bring out for him a scroll, which he will see spread open.”³²

Dusuki et al. then offer pyramid-like priorities to implement CSR in the framework of *maṣlaḥa*. The pyramid-like priorities are designed utilizing the classical concepts of *maṣlaḥa* and *maqāṣid al-sharīʿa* developed by al-Ghazali and al-Shatibi.³³ The pyramid-like priorities move upward, and a corporation will strive for the next level as soon as the previous one has been fulfilled. However, the three parts of the pyramid are not mutually exclusive; they are interrelated and result in flexibility in the

decision-making process. Nevertheless, they should still be confined within the *sharī'a* framework.³⁴

The mechanism goes as follows: the bottom of the pyramid is the priority called *ḍarūriyya* or essentials, namely, “those [things] on which the people’s lives depend, the neglect of which leads to total disruption and chaos.”³⁵ In its implementation, CSR is intended for stakeholders’ essential needs, primarily to safeguard the five elements above of *maqāṣid al-sharī'a* (religion, life, intellect, posterity/lineage, and property) and the public good in general.³⁶ Such CSR programs include the availability of prayer rooms or protecting employees’ safety and health in the workplace.³⁷

When fulfilled, then the corporation strives for the second level, that is, complementary or *hājjiyya* obligations. These are “the whole supplementary to the five essential values, and they refer to interests whose neglect leads to hardship in the life of the community, although not to its collapse.”³⁸ At this level, CSR is intended to remove difficulties that may pose a threat to the survival of the regular order,³⁹ including such CSR programs as a safe workplace, fair pay, continuous training, and enhanced human quality programs.⁴⁰

The highest level is “embellishment” or *taḥsīniyya*, namely, those “interests whose realization leads to improvement and the attainment of that which is desirable.”⁴¹ This level is achieved when a corporation engages in activities or programs that improve public life advancement. These include giving charity to the poor and needy, scholarships for poor students, and so forth.⁴² Thus, according to Dasuki, Islam views CSR holistically and dynamically, considering the constantly changing realities and circumstances. Furthermore, in this framework, *maṣlaḥa* is viewed as a conflict resolution framework when implementing CSR.⁴³

Below I discuss Islamic commercial banks’ stance on corporate zakat as CSR in financing their social programs in Indonesia. I use four qualitative predictors in assessing their stance, namely, sources of CSR funds, terms of use of each fund, implemented CSR programs, and channel of their CSR funds. These predictors were chosen based on the literature review on the principles of zakat and CSR practices in IFI. The principles of zakat say, for example, that it is a religious obligation with specific requirements (e.g., a threshold when zakat is due, the correct rates, the beneficiaries dictated by *sharī'a*). When someone pays zakat without fulfilling these conditions, the obligation of paying zakat is not yet deemed to be fulfilled, and whatever amount the person gives would be simply be regarded as charitable giving (*infak* or *sedekah*). The lack of rulings in Islamic law in the form of jurisprudence (*fiqh*), rulings (*fatwā*), or state laws, which regulate corporate zakat payment, collection, distribution, and utilization, has left the question of the possible overlap between corporate zakat and CSR unanswered. The Islamic commercial banks’ stance is comprehended in light of *maṣlaḥa* and *maqāṣid al-sharī'a*, to explain the phenomena theoretically and to assess the significant implications of such a stance.

The Practices of CSR within Islamic Commercial Banks

Bank Muamalat Indonesia

Bank Muamalat Indonesia (BMI) implements its CSR programs in cooperation with its zakat agency and CSR operator, namely, BMI zakat collector agency.⁴⁴ BMI's corporate secretary division once managed CSR, but since 2010, CSR has been transferred to the zakat agency. The corporate secretary is now assigned to support BMI's CSR implementation (Annual Report and GCG Report 2012).⁴⁵

BMI was previously budgeted for its CSR.⁴⁶ The CSR Report of 2010 mentioned that BMI had allocated 2.5% of its profit for a CSR fund, namely, USD 129,909.97. Now, zakat and Islamic charitable contributions (ZIS funds) and non-ZIS funds (non-*ḥalāl* income) have become sources of BMI's CSR. In 2012, BMI received non-*ḥalāl* income totaling USD 417,814.55, which comprises interest (USD 190,102.05) and penalties (USD 227,712.5).

The informants said zakat funds, including corporate zakat, are utilized just for the *asnāf* or eight groups of beneficiaries enshrined in the Qur'ān, while CSR funds are for social activities in general.⁴⁷ According to archives, non-ZIS funds are utilized under the *sharī'a* principles for social programs beneficial to the community without distinction of race, religion, ethnicity, or class. BMI does not use non-ZIS funds for religious-related activities and educational purposes. They are used merely for the development and improvement of social facilities. For examples in 2012, CSR funds originating from non-*ḥalāl* incomes were used for (1) construction of toilets (USD 333.33); (2) clean water in Brebes, East Java (USD 16,021.57); (3) Green Village construction in Bengkulu (USD 435.42); (4) construction of a hospital in Solo (USD 5,000.00); (5) other programs (USD 4,412.5); and (6) administrative and account fees (USD 57.71); in total USD 46,080.78 were spent.

BMI focuses its CSR activities through its zakat agency in various programs under the aegis of community development, microfinancing, and social charity. The annual report and GCG report of 2012 categorize the CSR programs into the following: first, cooperation between BMI's CSR and the zakat agency; second, routine programs of the zakat agency; third, unique program of the zakat agency in 2012.

The first category includes such social charity programs as "Cataract Surgery for the Poor." Another is a community development program for orphans in Jakarta, Bogor, Depok, Tangerang, and Bekasi, launched on September 18, 2012. Assistance was given in an entrepreneurial franchise for "Sabana Fried Chicken" worth USD 12,500 for ten booths. Both programs are part of BMI's CSR flagship "Share Sustenance Program."

The second category has three prime programs for community development. The first is the Mosque-based Micro Business Community;

it is a revolving fund for productive microbusinesses run by the mosques' congregation's low-income families. Since 2006, the program has assisted 597 microbusiness groups comprising 7552 beneficiaries in 18 provinces. The second is the Cooperative Operation of Islamic Financial Services; this is a follow-up to the Mosque-based Micro-Business Community program targeted at the successful groups. The third is the Islamic Micro Finance Institute; in this program, the zakat agency cooperates with the Ministry of Cooperative and Small-Medium Enterprises to grow and empower Islamic microfinance in Indonesia through capital mentoring training and technology support.

The last category is a community empowerment program, especially for orphans and victims of the Aceh Tsunami, that is, the Orphan Kafala Program. This program is jointly run with the Islamic Development Bank and some other Non-Governmental Zakat Agencies. In 2012, the program realized USD 908,333.33 for Islamic Solidarity School assistance, an integrated educational facility established for the Aceh tsunami orphans. The school was established by the Islamic Development Program in cooperation with the Greater Aceh Government, managed, and supervised by the zakat agency with support from BMI. Another beneficiary school is Madinah Al Munawaroh Solidarity School, a graphic design vocational school built by the Islamic Development Bank and managed by the zakat agency.

Bank Syariah Mandiri

In its Annual Report and GCG Report of 2012, BSM opened the CSR section by saying that BSM wants to benefit shareholders and stakeholders. Hence, the triple bottom-line policy is adopted for CSR: economic indicators, environmental indicators, social indicators, a.k.a. profit, people, and the planet.⁴⁸ As a *sharī'a* business institution, BSM also adopts the fourth mission, that is, to advance universal *sharī'a* values.

Based on my interview and the archives, there are three sources of CSR funds in BSM. The first is social lending (*qard al-ḥasan*). In 2012, social lending was made up of penalties (USD 69,222.30), donations/gifts (USD 706.04), interest (USD 37,800.95), and other social funds, for example, commission and fees (USD 40,135.69). In total, they are worth USD 147,864.98 in 2012. Social lending is channeled through BSM Zakat Agency as its partner institution, amounting to USD 130,102.78, all distributed by the BSM Zakat Agency. The informant said: "Because they are not *ḥalāl*, they are not acknowledged as Islamic Bank revenue; they are used for CSR programs of nonconsumptive and public facilities."⁴⁹

The second are zakat, Islamic charities, and *waqf* (Islamic trusts). In 2012, zakat consists of BSM corporate zakat (USD 2,344,300.52), BSM employees' zakat (USD 523,405.02), and BSM customers' zakat (USD 239,089.88). The informant adds:

BSM wants to build a positive image in the community through corporate zakat, and the operator is the BSM Zakat Agency, and the Agency has *Sharī'a* Supervisory Board to make sure its programs comply with *sharī'a*, viz. according to eight *asnāf*. The eight *asnāf* is the BSM Zakat Agency working area, but we give marks on what aspects [we choose] so that our corporate zakat funds are not distributed without direction.⁵⁰

The third is social funds (the informant called it “budgeted CSR”). In 2012, BSM distributed USD 69,324.54 for the social funds. What distinguishes social funds from two other CSR sources is that social funds are distributed directly by BSM to beneficiaries. The informant said that these come from BSM pocket as part of its promotional fund; it can be used for costs associated with holding specific programs, for example, every year funding requests are made by the BSM’s Administering Agency of Islamic Spirituality or by low-income employees who are raising money to perform ritual animal sacrifices. From time to time, BSM would hold an event where there is a need for an operational fee such as printing flyers or promotion; the funds would be used for these costs. “Principally, we try to put each fund into its category and use it accordingly.”⁵¹

As mentioned earlier, BSM’s CSR programs are carried out in cooperation with the BSM Zakat Agency in three categories. The Agency has three primary programs: (1) *Mitra umat* or microfinancing program, (2) *Didik umat* or educational program, and (3) *Simpati umat* or social assistance program. The Agency makes programs based on these three categories. The programs are proposed to the BSM Corporate Secretary, which later examines them. Here the informant mentioned the CSR theory of “people, planet, and profit” and then went on to say:

We want BSM to be sustainable, and so does the BSM Zakat Agency, so that the program synergizes with BSM core values but is still within the eight [categories of zakat beneficiaries, or] *asnāf*. BSM wants to build a positive image in the community through corporate zakat, and the operator is the BSM Zakat Agency, and it has *Sharī'a* Supervisory Board to make sure its programs comply with *sharī'a*. Eight *asnāf* are the BSM Zakat Agency working area, but we give marks on what aspects [we focus on] so that our corporate zakat funds are not channeled in vain.⁵²

Bank Mega Syariah

In my interview, it was suggested that corporate zakat is part of CSR in the bank. Bank Mega Syariah (BMS) also allocates specific funds for CSR called promotional funds.⁵³ The archives, however, say that CSR is financed with social funds. After triangulating the interview and other

archives, it became clear that the social funds come from the BMS corporate zakat. Thus, BMS does not integrate its non-*ḥalāl* income into its CSR report. In 2012, BMS received non-*ḥalāl* income from its checking service (USD 4377.58) and other sources (not specified, USD 2,166.66). Non-*ḥalāl* income from the checking service is utilized together with *qarḍ al-ḥasan* (social lending) funds. In 2012, *qarḍ al-ḥasan* was utilized for donations (not specified, USD 250) and other social programs (not specified, USD 833.33).

In 2012, BMS channeled its corporate zakat, that is, its social funds of USD 187,301.39 in the following ways: (1) channeling to other institutions, that is, zakat agencies, Islamic social and mass organizations, Islamic foundations; and (2) self-channeling in the form of scholarship for children of office assistants and drivers of BMS managed by the Islamic Spirituality Unit (USD 16,666.67).

CSR is implemented in three primary programs: first, channeling BMS corporate zakat to NGO's Zakat Agencies of Muhammadiyah and Nahdlatul Ulama to BMS' Islamic Spirituality Unit's scholarship programs and other zakat agencies outside the island of Java, and for education allowance programs for 200 employees' children who meet the criteria. The second is the blood drives held every four months in cooperation with the Indonesian Red Cross. The third is the BMS's Sharing Program. In 2012, 5078 orphans in some parts of Indonesia received aid of USD 27,083.33. The informant's response regarding corporate zakat and CSR was the following: "We purify our company's wealth; we channel [it] through Non-Governmental Zakat Agencies; we believe they have programs according to [the eight categories of zakat beneficiaries] *asnāf*, so we let the zakat agencies do the distribution; later, we will think of the brand image for BMS."⁵⁴

Bank Rakyat Indonesia Syariah

For Bank Rakyat Indonesia Syariah (BRIS), corporate zakat is not the same as CSR. Thus, BRIS supports its CSR from *qarḍ al-ḥasan* (social lending) and non-*ḥalāl* incomes, namely, interest, fines in the contract of financing intended for charity, and charity from third parties.⁵⁵ Information from the archives, however, reveals that all zakat, Islamic charity, *qarḍ al-ḥasan*, and non-*ḥalāl* incomes become sources of CSR in the bank. In the GCG report, non-*ḥalāl* income is deemed not as a BRIS entitlement. Thus, all funds go to social activities (not specified) together with *qarḍ al-ḥasan* (both reported under the *qarḍ al-ḥasan* post). In 2012, *qarḍ al-ḥasan* funds reached USD 113,000.00; Islamic charities, USD 29,416.66; penalties, USD 79,666.66; and interest USD 3,916.66. BRIS corporate zakat, based on the BRIS Financial Report of September 2013, amounted to USD 186,583.33. Meanwhile, the total collection of zakat from employees, customers, and the public was USD 257,750.

In 2012, BRIS distributed USD 131,666.66 to finance CSR programs that are focused on six areas: education, health, economic development, support for houses of prayer and *dakwah* (propagation), environmental preservation, revitalization of public facilities, and support in the event of natural disaster and other catastrophes. When asked whether corporate zakat utilization is also intended to strengthen the BRIS brand among the public, the informant repudiates this. He then told me that this is the reason why BRIS's proposal to the National Zakat Agency to fund one of BRIS's social programs was rejected. The National Zakat Collector Agency might have evaluated the proposed program and seen that it did not fit into one of eight groups of zakat beneficiaries (*asnāf*). The informant went on to say:

We hold the *Shari'a* Supervisory Board's opinion that zakat is religion, thus [there is] no branding. CSR has a campaign element, but we do not deny the need for a campaign. CSR is CSR, and corporate zakat is on the other end. When a convergence happens [between CSR and corporate zakat], that is not something made up. For example, when BRIS assists social activity and people know that it is from BRIS, which is not because of us. When it is zakat funds, we are not setting up [people's perception]. However, if we use CSR funds, we are influencing [people's perception]; a case in point, during the opening of BRIS's new branches and we conduct free medical treatment or provide basic food [...] we are setting up people to know that BRIS organizes such activities.⁵⁶

Bank Negara Indonesia Syariah

BNIS's Good Corporate Governance (GCG) report of 2012 states that the sources of CSR funds are the CSR budget (USD 221,166.66) and BNIS employees' donation (USD 68,833.33), totaling USD 290,000.00. In 2012, BNIS designed and implemented a CSR program involving employees through the BNIS workers' union and the zakat collector unit as follows: (1) BNIS's Zakat Collector Unit: ritual sacrifice (*Qurban Amanah*) for the 2012 Eid ul-Adha festival, aid for Islamic schools and Qur'ānic studies facilities and infrastructure, production machine aid for microbusiness, an allowance for orphans; and (2) communication division of BNIS: scholarships for college students; disaster relief; aid for Islamic schools. The total CSR funds expended in 2012 were USD 165,750.00.

It is not clear from the report whether the CSR budget comprises BNIS corporate zakat and the donations comprise the employees' zakat. In my interview, I learned that BNIS has a budget for CSR beyond corporate zakat.⁵⁷ The informant said that the Annual Shareholders General Meeting decided both the corporate zakat and CSR expenditure; zakat is from profit before tax and CSR from profit after tax. CSR funds are focused

on education, and the Zakat Collector Unit implements the programs. Meanwhile, corporate zakat funds channeled to the Zakat Collector Unit are specifically for the *asnāf*. The Zakat Collector Unit has a *sharī'a* advisor who will ensure that the utilization of zakat is according to the Islamic doctrine, namely, distributed to the *asnāf*.⁵⁸

Based on the Annual Report of 2012, BNIS arguably does distinguish its CSR and corporate zakat. BNIS' corporate zakat in 2012 amounted to USD 264,083.33. Meanwhile, zakat from outside BNIS (not specified whether from employees, customers, or public) was USD 192,166.66, totaling USD 456,250.00. These zakat funds were utilized as much as USD 378,166.66 through the Zakat Collector Unit. (Unfortunately, there are no details on their utilization in either the annual report or the GCG report.)

If zakat funds (both corporate and individual) are excluded from the CSR report, the non-*ḥalāl* incomes are reported under social activities. BNIS is similar to BMS in that both do not integrate their non-*ḥalāl* income utilization into their CSR report. In 2012, sources of non-*ḥalāl* incomes were penalties (USD 5,340.13) and account closing before the maturity period (USD 21,159.55), totaling USD 26,499.69. Together with zakat and Islamic charities' funds managed by BNIS' Zakat Collector Unit, these funds were utilized for social activities that included: social services organized by local branches (programs not specified), aid for educational institutions, aid for the construction of places of worship, clean water programs, medical bill assistance, aid for internal employees (marriage cost assistance), and so forth. In 2012, USD 32,316.06 was expended for these social activities.

Hence, the case studies reveal that zakat (including corporate zakat), Islamic charitable contributions (*infak* and *sedekah*), and other social funds have coalesced in CSR implementation within five banks that have voluntarily complied with corporate zakat duty (Table 7.1).

A Fusion of Zakat and CSR

Within the growing discourse about corporate zakat in Indonesia, there is an impression that corporate zakat funds could be a source of CSR funds for a Muslim-owned company. Examples include a statement by one of the experts of *sharī'a* economics to business people who raised objections in Indonesia to the concept of mandatory CSER (especially for businesses whose activities affect the environment) when this requirement was introduced in the Limited Liability Company Law and the Investment Law circa 2007. He criticized this group of entrepreneurs interested only in their corporations' good and neglected their social obligations. He then compared the concept of mandatory CSR in the law with corporate zakat, which had gained attention among zakat stakeholders at that time (around 2006–2009). In addition to paying tax, companies also have financial responsibility and obligation to pay zakat as the current Zakat Law in Indonesia already lists

Table 7.1 Coalescence of Funds within Islamic Banks' CSR

<i>Banks/ Predictors</i>	<i>BMI</i>	<i>BSM</i>	<i>BMS</i>	<i>BRIS</i>	<i>BNIS</i>
Sources of CSR?	1 Zakat, <i>Infak</i> , <i>Sedekah</i> (incl. corporate zakat); 2 Budgeted CSR; 3 Non- <i>ḥalāl</i> income (interests, penalties, etc.)	1 Zakat, <i>Infak</i> , <i>Sedekah</i> (incl. corporate zakat) and <i>Waqf</i> ; 2 Budgeted CSR; 3 <i>Qarḍ al-ḥasan</i> (penalties, interests, etc.)	1 Zakat, <i>Infak</i> , <i>Sedekah</i> (incl. corporate zakat)	1 Zakat, <i>Infak</i> , <i>Sedekah</i> (incl. corporate zakat) 2 <i>Qarḍ al-ḥasan</i> (penalties, interests, etc.)	1 Zakat, <i>Infak</i> , <i>Sedekah</i> (incl. corporate zakat) 2 Budgeted CSR and employees' donation
Terms of use?	1 Zakat for <i>asnāf</i> ; 2 For social activities in general; 3 For nonreligious activities or educational purposes	1 Zakat for <i>asnāf</i> ; 2 For social activities in general 3 For nonconsumptive and public facilities	1 Zakat for <i>asnāf</i>	1 Zakat for <i>asnāf</i> 2 For social activities in general	1 Zakat for <i>asnāf</i> 2 For social activities in general
CSR programs?	Community development; microfinancing; social charity	Microfinance; educational programs; social assistance programs	Education allowance; blood drives; <i>Mega Syariaah Berbagi</i>	Educational; health; economic development; mosques and <i>ḍakwah</i> ; environment; natural disaster	Qurban Amanah; Islamic schools infrastructures; microbusiness aid; an allowance for orphans, scholarship
Channel?	Coop. BMI and its Zakat Agency; BMI's Zakat Agency routine programs; BMI's Zakat Agency special programs	1 and 3 distributed by BSM's Zakat Agency; 3 Distributed directly by BSM	Self-channeling to other Zakat Agencies	Self-channeling to BAZNAS and other Zakat Agencies	Self-channeling (Zakat Collector Unit & Worker Union); Channeling to BAZNAS and other Zakat Agencies

Source: Compiled from interviews, banks' documents, and archives (Annual Shareholders General Meeting Decisions; Financial Reports; Good Corporate Governance Reports; Annual Reports).

legal persons such as companies as zakat payers. Thus, companies should become zakat payers based on the arguments above.⁵⁹

The laws and regulations related to Islamic banking have no specific provisions on the sources of CSR funds for *sharīʿa* banks. Law No. 21 of 2008 concerning *sharīʿa* banking states that an Islamic commercial bank and the *sharīʿa* business unit of a conventional bank can perform a social function in the form of *Baitu-l-mal* (house of charity), which receives funds from zakat, an Islamic charity, grants, or other social funds and channel them to the zakat agents (art. 4 (2)). Meanwhile, the Central Bank of Indonesia regulations only requires Islamic banks to report on the use of social funds and non-*ḥalāl* income allocated by the bank. According to art. 62 (2n-o) of the Central Bank Regulation No. 11/33/PBI/2009 dated December 7, 2009, and Circular Letter of the Central Bank No. 12/13/DPbS dated April 30, 2010, on the implementation of GCG in Islamic commercial banks and the *sharīʿa* business unit of a conventional bank, the social fund and the non-*ḥalāl* income distribution should be disclosed in the annual report of GCG. For Islamic commercial banks, non-*ḥalāl* income may be derived from interest, funds derived from the placement of Islamic banks in conventional banks, and penalties (*taʿzīr*) such as penalties for deliberate late payment.

Based on existing accounting report guidelines for Islamic banking, Islamic commercial banks have to report the sources and the use of zakat funds that they manage in the form of Laporan SPDZ or Laporan SPD-ZIS as per the *Sharīʿa* Entities Accounting Standards 101 (PSAK 101) and Circular Letter of the Central Bank No. 7/56/DPbS of 2005. In the PSAK 101, Islamic commercial banks must present a Report on sources and utilize zakat funds (Laporan SPDZ). In this report, there is a segment of zakat fund sources, and one of the sources is the company (corporate zakat). The Circular Letter of the Central Bank No. 7/56/DPbS of 2005 is intended to be the financial report standard for *sharīʿa* banks in general. There is an additional statement that must be reported by *sharīʿa* banks, namely, regarding zakat funds managed by the banks. This report is known as the Report on sources and the utilization of zakat and charitable contributions (Laporan SPD-ZIS). The Laporan SPD-ZIS lists zakat paid by a *sharīʿa* bank (corporate zakat) as one source of zakat funds.

Therefore, theoretically, there is room for Islamic commercial banks to maximize their CSR programs by mobilizing their corporate zakat funds. In a pragmatic approach of this kind, the obligation of religion will be met and will subsequently sustain the bank's business because the banks would then have additional funds for social programs. One of the main reasons Islamic commercial banks pay corporate zakat is their attitude toward zakat principles as an obligation in Islam to purify a Muslim's property. For them, the issue is not whether the subject of zakat is an individual or a legal entity. They are further motivated by the fact that their type of

business is a *sharīʿa*-related industry that must abide by *sharīʿa* moral and legal values, as well as being committed to the public good (*maṣlaḥa*).

From the case studies above, we can see that all Islamic commercial banks' CSR programs have covered three types of *maṣlaḥa*: the essentials or *ḍarūriyya* and the complementary or *ḥājīyya* through programs that benefit their stakeholders (employees and families), as well as the embellishments or *taḥsīniyya* through programs for the community at large. Conflicts of interest in deciding which programs should be prioritized do not appear because each Islamic commercial bank has a wide array of social programs that benefit their direct stakeholders (employees and their families) and the larger community. The interviews reveal a belief on the part of the management side that employees' and community's well-being will impact the corporation's business. The informant of BPS, for instance, said that another benefit of CSR-cum-corporate zakat of Islamic banks is to strengthen the loyalty of their employees and foster tranquility in the workplace because the funds can be used for a scholarship program for employees' children and health insurance for lower grade employees.

Informants from BPS agreed with this pragmatic approach. As the caretaker of zakat and instigator of corporate zakat payment in BPS, he wants the company to pay corporate zakat together with CSR because CSR is the corporate zakat of Islamic banks: "This is certain, in the future CSR will be corporate zakat, many other Islamic banks treat it that way [...] some banks to my knowledge. Why not?" Informants from BSM also confirmed this pragmatic approach in treating corporate zakat to strengthen corporate branding and the image of BSM in the community (of course, under the vision and mission of BSM). Other Islamic banks (BRIS and BMS) were somewhat shy to justify using this pragmatic approach, while BNIS expressly rejected it because BNIS budgeted its CSR funds separately.

The five banks report their sources and uses of corporate zakat, an Islamic charity, CSR funds as well as non-*ḥalāl* income under the rubric of "Sources and Uses of Social Funds" in their CSR report (except BMS and BNIS, which distinguish between the report of "Sources and Uses of Social Funds" and the report of "Sources and Uses of Non-*Ḥalāl* Funds"). Despite this, the five Islamic commercial banks have used social funds and non-*ḥalāl* funds to finance their social activities or programs. At the same time, they agree that there should not be a mixing of corporate zakat funds (and zakat in general) and CSR funds in their utilization due to the different underlying values between zakat and CSR. To them, zakat is motivated by Islamic religious ethics, while secular values generate CSR.

As a result, there is a distinction between corporate zakat and CSR funds in Islamic commercial banks' social activities. Zakat funds, therefore, are reserved for the *asnāf*: the poor (*al-fuqarāʾ*); the indigent (*al-masākīn*); those whose hearts have been reconciled to the truth, such as new converts to Islam (*al-muʿallaf*); those in bondage (*al-riqāb*); debtors (*al-ghārimīn*); those in the cause of God (*fi sabīl Allāh*); and wayfarers (*ibn al-sabīl*). Meanwhile,

CSR funds are for social activities, such as disaster relief, clean water, and sanitation programs. Since the funds for social activities in Islamic commercial banks are also derived from non-*ḥalāl* income, they ultimately classify every social fund source and its use. The non-*ḥalāl* incomes are not to be used for programs involving consumption (food or cash assistance) and supporting religious-related activities such as building Islamic schools or funding Islamic propagation (*dakwah*). These incomes are considered unlawful (non-*ḥalāl*) in Islamic jurisprudence; hence, they should not be consumed just like the prohibition of consuming non-*ḥalāl* food for Muslims. Likewise, they cannot be used for any religious-related activities or programs.

Thus, if we summarize the stance of five Islamic commercial banks that have paid corporate zakat regarding the overlap between corporate zakat and CSR funds, it will be a continuum of affirmative, ambivalent, and negative stance. A bank that sits on this continuum will depend on its responses to the following signifiers and its practice in implementing CSR programs.

From Table 7.2, we can see that BNIS is primarily hostile toward the notion of corporate zakat as their CSR because they have a separate budget for CSR and corporate zakat. They do not integrate their zakat and Islamic charitable contribution utilization into their CSR report; they distinguish the uses of zakat funds and non-zakat funds when funding their social activities. However, there was an incident when they complained about the National Zakat Collector Agency's (BAZNAS) role in controlling how the zakat funds and corporate zakat funds should be used, and this suggests that they still consider zakat as *theirs* to give, not the right of zakat beneficiaries they owe. To some extent, this reflects how they approach using their CSR funds, namely, to maintain the right to control its use based on their corporate policy. This approach is also the case for BRIS. Meanwhile, BSM declares that they use corporate zakat as a source of CSR funds and, thus, uses them to further their vision and mission by aligning them with their own CSR programs. It would have the intended effect of strengthening BSM's brand image in the community. However, BSM still budgets its own CSR funds and distinguishes the utilization of zakat funds and CSR funds.

To insist on distinguishing the origins and utilizations of their social activities funds is the most striking feature of Islamic commercial banks' stance on the overlap between corporate zakat and CSR. All of the banks have a negative position on this question. Their persistence in distinguishing the utilization of zakat funds and non-zakat funds may be explained from an Islamic ethics perspective, namely, that the decisions that they made are guided by the concept of *maṣlaḥa-cum-maqāṣid al-sharī'a* (an intention to achieve public good within the boundaries of *sharī'a*). In this concept, Muslims are required to make sure that the five elements of *maqāṣid al-sharī'a* (i.e., the preservation of religion, life, intellect, posterity/lineage, and property) are taken into account in every action or

Table 7.2 Indonesia's Islamic Banks Stance on Corporate Zakat is CSR

<i>Banks/Questions</i>	<i>BSM</i>	<i>BRIS</i>	<i>BMS</i>	<i>BMI</i>	<i>BNIS</i>
Budgeting CSR along with Corporate Zakat?	Yes	No	No	Yes	Yes
Integrating Zakat and Islamic Charity (ZIS) funds into CSR Report?	Yes	Yes	Yes	Yes	No
Distinguishing between zakat funds and non-zakat funds utilization?	Yes	Yes	Yes	Yes	Yes
Who manages social activities or CSR?	For zakat, <i>infak</i> & <i>sedekah</i> by BSM Zakat Agency but controlled by BSM For non-zakat, <i>Infak</i> & <i>Sedekah</i> by BSM	BRIS, but controlled by BAZNAS for corporate zakat	BMS, but believe entirely in BAZNAS and other zakat agencies	BMI's Zakat Agency supported by BMI corporate secretary	BNIS' worker union and UPZ but controlled by BAZNAS for corporate zakat

Note: White = Affirmative; grey = ambivalent; black = negative.

Source: Compiled from interviews, banks' documents, and archives (Annual Shareholders General Meeting Decisions; Financial Reports; Good Corporate Governance Reports; Annual Reports).

decision they take. These five elements sit hierarchically, meaning that safeguarding one's religion takes precedence over safeguarding one's life, intellect, posterity/lineage, and property.

Consequently, in order for the zakat paid to be legitimate according to *sharī'a*, the payers have to follow the doctrine of zakat that includes its terms and conditions (e.g., the minimum threshold and rate of zakat) and its distribution (to the *asnāf*). Failure to fulfill these requirements will invalidate their zakat payments and, thus, turn the payment into mere charity (*infak* or *sedekah*). This situation is considered to jeopardize one's religion because one has failed to perform one of the Islamic obligations, i.e., paying zakat. Also, another Islamic doctrine prohibits Muslims to consume non-*ḥalāl* things, including those earned with non-*ḥalāl* money. Hence, Islamic commercial banks' non-*ḥalāl* incomes are not used for social programs or religious activities.

As for the earlier assumption – that is, that Islam is prone to different attitudes toward others depending on whether the other is of the same religion or not⁶⁰ – this will depend on the interpretation of zakat beneficiaries (*asnāf*) the bank or zakat agencies adhere to. As previously explained, the largest beneficiaries of zakat are the poor (*al-fuqarā'*) and the indigent (*al-masākīn*). Many Muslim jurists argue that the traditional beneficiary group can be extended into any social welfare program in contemporary interpretations. Thus, giving zakat means that a Muslim will transfer the ownership of his/her property to the beneficiaries. It is not merely giving donations because zakat is an obligation, and money or goods of zakat is a right of God's beneficiaries through the zakat payers.⁶¹ Such contemporary figures have also challenged the exclusive proposition of zakat beneficiaries as Abdul Aziz al-Khayyat, a leading Jordan Islamic scholar, who argues that the term *al-fuqarā'* means all categories of the poor in Arabic. Therefore, the beneficiaries must include the non-Muslim poor. Islamic Relief, a prominent British Muslim relief agency, has practiced this view, which extends *zakāt al-māl* funds to non-Muslims in Africa.⁶²

Considering that corporate zakat is a novel interpretation of *sharī'a* of zakat in contemporary Islamic thought, the beneficiaries of corporate zakat should, in theory, be interpreted more inclusively in order to achieve the goal of *sharī'a* (*maqāṣid al-sharī'a*), namely, *maṣlaḥa* or public welfare. This inclusive interpretation is possible given the dualistic character of zakat. Zakat is an integral part of religious ritual and one of Islam's five "pillars" (*arkān al-Islām*) and functions as a substantive legal sphere in tax law in Islamic jurisprudence.⁶³ This dual characteristic has made zakat unique among all branches of law in Islam because even though the obligation of zakat falls under the classification of "acts of worship" (*ibadāt*) in Islamic jurisprudence (*fiqh*), its substantive legal sphere falls under the aegis "acts involving social transaction" (*mu'āmalāt*). Muslim jurists maintain that interpretations of the concepts of *ibadāt* are limited by the legal maxims that stipulate that any worship and their rituals should be

considered prohibited, except where a text-proof (*dalīl*) in the texts of the Qurʾān and Ḥadīth is available to confirm them. Conversely, *muʿāmalāt*, which governs horizontal relationships among human beings, provides a significant amount of elasticity in interpretation because, concerning this, the legal maxims says that everything should be considered permissible except where a *dalīl* in the texts of the Qurʾān and Ḥadīth explicitly prohibit such acts.⁶⁴ Therefore, the substantive law of zakat is acceptable for progressive interpretations under current needs, without conflicting with the *sharīʿa* of zakat, so long as the law's spirit and principle are preserved.

Unfortunately, this study cannot discuss whether the bank's corporate zakat beneficiaries are the Muslim indigent only or whether they may include the poor from any religion. If we consider these banks' other CSR funding sources (i.e., budgeted CSR, social lending, and non-*ḥalāl* income), it seems that the funds are allocated for programs whose beneficiaries are exclusively Muslims; for examples, a mosques-based microfinance program of BMI, the use of the word "*umma*," zakat agencies and Islamic social organizations as the beneficiaries of BMS's zakat, mosques and preaching programs of BRIS, and *qurban* (Islamic sacrifice), or Islamic schools and Qurʾān recitation programs of BNIS). This condition cannot justify the above assumptions because the interpretation of *sharīʿa* follows the purpose of its revelation. This interpretation provides space for Islamic social institutions to provide benefits and welfare to all. Other CSR programs from these banks have also touched all society levels (e.g., cataract surgery for the poor; clean water programs).

Finally, these Islamic Banks operate in predominantly Muslim areas where they are still regarded as being left behind socially and economically from other religious communities. At present, these banks' CSR programs may have only focused on zakat distribution and started to embark on more systemic charitable activities by working on capacity building for the Muslim community development as their primary customers. Along with the increasingly inclusive Islamic banking services for customers who adhere to other religions, Islamic Banks should also start implementing CSR programs that provide benefits and build capacity for all; due to the nature of objectives of *sharīʿa*, revelation is the realization of public welfare.

Conclusion

This chapter's main issue is Islamic commercial banks' stance toward corporate zakat when concurrently considered with the banks' CSR. This chapter began with an exposition of the status and definition of CSR in Indonesian business law. It then discussed the possible convergence or overlap between *sharīʿa*, particularly the Islamic tenets on business ethics, and the UN Global Compact as global ethics for CSR.

This study finds that there is ambiguity about corporate zakat's legal status according to Islamic law and business law in Indonesia (*fatwā/sharīʿa*

opinions or zakat, Islamic banking, and corporate laws); these sources are also silent on the overlap between corporate zakat and CSR. Meanwhile, CSR practice is becoming more common in Indonesia, including in the Islamic financial service sector. These phenomena can be seen from Islamic commercial banks' GCG reports (CSR reports).

Indonesia's Islamic banks have started to engage more actively on ethical investments, especially by pro-actively embracing CSR's concept into their business practices. In doing so, they couple their CSR program with Islamic almsgiving (zakat) and charitable contributions to work toward capacity building for community development. Given the lack of guiding rulings within Islamic law regarding the relationship between corporate zakat funds and CSR funds, Indonesia's Islamic banks have adopted various responses: from affirmative to opposing positions regarding their overlap. As far as theoretical considerations are concerned, some banks hesitate to assert that corporate zakat is their CSR because they perceive different values underlying zakat and CSR. Practically, however, corporate zakat funds have become an integral part of Indonesia's banks' CSR.

Nevertheless, the banks do not mix corporate zakat funds with CSR funds because they believe that the zakat beneficiaries have been limitedly dictated by *sharī'a*. This measure is taken based on Islamic ethics – known as *maālaḥa-cum-maqāṣid* or an intention to achieve public welfare within the boundary of *sharī'a* – that guides the banks in implementing their CSR. Whether this stance is a strategic move or not for Indonesia's Islamic banks, which have embarked on strategic philanthropy, will require further study because the shareholders, stockholders, and customers of Indonesia's Islamic banks are not necessarily limited to Muslims.

Notes

- 1 Hasibuan-Sedyono did not detail the research subject, but her paper mentions briefly the classification of corporations investigated in this study that includes multi-national and state-owned companies, public and private companies, Chrysanti Hasibuan-Sedyono, "Corporate Social Responsibility (CSR) in Indonesia," *Economy Paper: Indonesia – Asia-Pacific Economic Cooperation* (October 2005), 1. The PIRAC research paper lists the multinational companies concerned, including General Electric, Unilever, and Citibank, see Public Research Interest and Advocacy (PIRAC), *Investing in Ourselves: Giving and Fundraising in Indonesia* (Philippine: Asian Development Bank, 2002), 15–16.
- 2 Hasibuan-Sedyono, "Corporate," 2.
- 3 Maifil Eka Putra, "Sumbangan Perusahaan Mencapai Rp. 8,6 Triliun," *PIRAC–News*, <http://pirac.org/2014/06/19/sumbangan-perusahaan-mencapai-rp-86-triliun/> (accessed December 31, 2014). Similarly, there is no detailed information about which corporations became the research subject. Comparing to the 2002 study and looking at news featured in the charitable organizations' websites about corporate donations made to, for example, Dompot Dhuafa, Rumah Zakat, and so forth, the research subject is also such a group of companies as multinational companies and nationally owned, public and private companies.

- 4 The Constitutional Court Decision No. 53/PUU/VI/2008: *Kadin vs. the State*, 98.
- 5 The Constitutional Court Decision No. 53/PUU/VI/2008, 99, 100.
- 6 Geoffrey Williams and John Zinkin, "Islam and CSR: A Study of the Compatibility between the Tenets of Islam and the UN Global Compact," *Journal of Business Ethics* 91, no. 4 (2010): 519; Stephen Brammer, Geoffrey Williams, and John Zinkin, "Religion and Attitudes to Corporate Social Responsibility in a Large Cross-country Sample," *Journal of Business Ethics* 71 (2007): 229, 240.
- 7 Bammer, Williams, and Zinkin, "Religion and attitudes", 240. Rice's study has explained the relevance of Islamic philosophy in business practice and its managerial implications for doing business in Egypt. Rice, however, acknowledges that although her analytical framework may apply to other societal contexts, further empirical research is needed to explore what specific ethical issues are the main concerns of managers and how they resolve social responsibility issues in their countries, Gillian Rice, "Islamic Ethics and the Implications for Business," *Journal of Business Ethics* 18 (1999): 345–358.
- 8 Juniati Gunawan, "Corporate Social Responsibility Initiatives in a Regulated and Emerging Country: An Indonesia Perspective," in *Key Initiatives in Corporate Social Responsibility: Global Dimension of CSR in Corporate Entities*, ed. Samuel O. Idowu (Cham: Springer International Publishing, 2016); Putra, "Sumbangan Perusahaan"; Hasibuan-Sedyono, "Corporate Social Responsibility"; Public Research Interest and Advocacy (2002, 2013), *Investing in Ourselves*.
- 9 Law Number 25 of 2007 concerning Capital Investment; Law Number 40 of 2007 concerning Limited Liability Companies; the Constitutional Court Decision Number 53/PUU/VI/2008: *Kadin vs. the State*; Patricia R. Waagstein, "The mandatory Corporate Social Responsibility in Indonesia: Problems and implications," *Journal of Business Ethics* 98 (2011), 459–461.
- 10 Gunawan, "Corporate Social Responsibility"; Putra, "Sumbangan Perusahaan"; Hasibuan-Sedyono, "Corporate Social Responsibility"; Public Research Interest and Advocacy (2002, 2013), *Investing in Ourselves*.
- 11 Umar A. Oseni et al., "The Legal Implications of 'Fatwa Shopping' in the Islamic Finance Industry: Problems, Perceptions, and Prospects," *Arab Law Quarterly* 30 (2016): 107–137; Walid Mansour et al., "How ethical is Islamic Banking in the Light of the Objectives of Islamic Law," *Journal of Religious Ethics* 43, no. 1 (2015): 51–77; Mehmet Asutay, "The Socio-Ethical Failure in Islamic Banking and Finance," *New Horizon* 182 (2012a): 33–35; Habib Ahmed, "Maqasid al-Shari'ah and Islamic Financial Products: A Framework for Assessment," *ISRA International Journal of Islamic Finance* 3, no. 1 (2011): 149–160.
- 12 Asutay (2012a), "The Socio-Ethical Failure," 2; Feisal Khan, "How 'Islamic' is Islamic Banking?" *Journal of Economic Behavior & Organization* 76 (2010): 811
- 13 Asutay (2012a), "The Socio-Ethical Failure," 2; Khan, "How 'Islamic'," 811.
- 14 Mansour et al., "How Ethical", 61–62.
- 15 Asutay (2012a), "The Socio-Ethical Failure," 2.
- 16 Mansour et al., "How ethical."
- 17 Asutay (2012a) "The socio-ethical failure," 3.
- 18 Noor Aflah, *Arsitektur Zakat Indonesia Dilengkapi Kode Etik Amil Zakat Indonesia* (Jakarta: UI-Press, 2009).
- 19 For the brief evolution, see Michael A. Santoro, "Business and Human Rights in Historical Perspective," *Journal of Human Rights* 14, no. 2 (2015): 155–161.
- 20 Aflah, *Arsitektur Zakat*, 93.

- 21 Ahmed, "Maqasid al-sharī'ah"; Mehmet Asutay, "Conceptualisation of the Second Best Solution in Overcoming the Social Failure of Islamic Banking and Finance: Examining the Overpowering *HomoIslamicus* by *Homoeconomics*," *IJUM Journal of Economics and Management* 15, no. 2 (2007): 167–195; Mehmet Asutay, "Conceptualising and Locating the Social Failure of Islamic Finance: Aspirations of Islamic Moral Economy vs. the Realities of Islamic Finance," *Asian and African Area Studies* 11, no. 2 (2012b): 93–113; Oseni et al., "The Legal Implication"; Mansour et al., "How ethical."
- 22 Asutay, "Conceptualisation of the second best."
- 23 Asyrah Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid al-Sharī'ah, Maslahah, and Corporate Social Responsibility," *The American Journal of Islamic Social Sciences* 24, no. 1 (2012): 29–30.
- 24 Dusuki and Abdullah, "Maqasid al-Sharī'ah," 29–30.
- 25 Imran Ahsan Khan Nyazee, *Islamic Jurisprudence (Usul al-Fikh)* (Islamabad: Islamic Research Institute Press, 2000).
- 26 Felicitas Opwis, "Maslaha in Contemporary Islamic Legal Theory," *Islamic Law and Society* 12, no. 2 (2005): 188–189, 193–196.
- 27 Al-Shatibi, *al-Muwafaqat fi Usul al-Shari'a* (Beirut: Dar al-Kutub al-Ilmiyya, n.d.), 3–6.
- 28 Al-Ghazali, *al-Mustasfa* (Cairo: al-Maktaba al-Tijariyya al-Kubra, 1937), 139–140.
- 29 Al-Ghazali, *al-Mustasfa*, 139–140.
- 30 Opwis, "Maslaha," 188, 197.
- 31 *Sharī'a* is self-executing, meaning that it "applies of its force, addressed directly, without an intermediary, to every believing individual ... [so when a believing Muslim reads a command in Qur'ān and Ḥadīth] the believing Muslim feels bound by that command as if it were addressed directly to him or her; see Frank E. Vogel, "Sharī'a as Law and Legal System: Changing Perceptions," *The 6th Farhat J. Ziadeh Distinguished Lecture in Arab and Islamic Studies, The Department of Near Eastern Languages and Civilization at the University of Washington* (May 6, 2008), 8.
- 32 William and Zinkin, "Islam and CSR", 528–529.
- 33 About the classical concept, see Mohammad Hashim Kamali, "Have We Neglected the Sharī'ah-Law Doctrine of Maslahah?" *Islamic Studies* 27, no. 4 (1988): 287–303; Mohammad Hashim Kamali, "Maqasid al-Sharī'ah: The Objectives of Islamic Law," *Islamic Studies* 38, no. 2 (1999): 193–208.
- 34 Dusuki and Abdullah, "Maqasid al-sharī'ah," 35–36.
- 35 Kamali, "Have We Neglected," 292; Kamali, "Maqasid al-Sharī'ah," 195.
- 36 Kamali, "Have We Neglected," 292; "Maqasid al-Sharī'ah," 19.
- 37 Dusuki and Abdullah, "Maqasid al-sharī'ah," 35.
- 38 Kamali, "Have We Neglected," 292; "Maqasid al-Sharī'ah," 195.
- 39 About *hajiyyat* see Kamali, "Have We Neglected," 292; Kamali, "Maqasid al-Sharī'ah," 196.
- 40 Dusuki and Abdullah, "Maqasid al-sharī'ah," 35–36.
- 41 About *tahsiniyyat* see Kamali, "Have We Neglected," 292–293; Kamali, "Maqasid al-Sharī'ah," 196.
- 42 Kamali, "Have We Neglected," 292–293; Kamali, "Maqasid al-Sharī'ah," 1999: p. 196.
- 43 Dusuki and Abdullah, "Maqasid al-sharī'ah," 26–27.
- 44 The interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.
- 45 The interview with BMI *Finance and Strategy Division*.
- 46 The interview with BMI *Finance and Strategy Division*.

- 47 The interview with BMI *Finance and Strategy Division*.
- 48 This is also stated by the informant from corporate secretary and legal division when explained CSR paradigm adopted by BSM.
- 49 Interviews with BSM *Head Division Corporate Secretary and Legal*, in Jakarta, on September 30, 2013.
- 50 Interviews with BSM *Head Division Corporate Secretary and Legal*.
- 51 Interviews with BSM *Head Division Corporate Secretary and Legal*.
- 52 Interviews with BSM *Head Division Corporate Secretary and Legal*.
- 53 The interview with BSM *Corporate Affairs Head*, in Jakarta, on September 17, 2013.
- 54 The interview with BSM *Corporate Affairs Head*.
- 55 The interview with BRIS *Senior Officer CSR*, in Jakarta, on October 23, 2013.
- 56 The interview with BRIS *Senior Officer CSR*.
- 57 The interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*, in Jakarta, on September 17, 2013.
- 58 Interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*.
- 59 See Surahman Hidayat, Director of *Sharī'a Consulting Center*, as quoted by Aflah, *Arsitektur Zakat*, 93.
- 60 Bammer, Williams, and Zinkin, "Religion and Attitudes," 240.
- 61 Maulana Wahiduddin Khan, "The Concept of Charity in Islam," *International Journal of Civil Society Law* 2, no. 3 (2004): 95.
- 62 Jonathan Benthall, "Financial Worship: The Quranic Injunction to Almsgiving," *Journal of the Royal Anthropological Institute* 5 (1999): 31.
- 63 Wael B. Hallaq, *Sharī'a: Theory, Practice, Transformations*, (Cambridge: Cambridge University Press, 2009), 231.
- 64 See the discussion of the legal maxims, for example, in Alfitri, "Expanding a Formal Role for Islamic Law in the Indonesian Legal System: The Case of Mu'amalat," *Journal of Law and Religion* 23 (2007–2008), 257.

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8 CONCLUSION

This book has investigated the novel corporate zakat obligation in Islamic law: whether business entities owned by Muslims should be subject to a religious obligation to pay the zakat the same way individual Muslims are. Delving into the surrounding questions of corporate zakat obligation is essential in Islamic law and modern society. The contemporary interpretation of *sharī'a* and the state's attempt at incorporating novel Islamic legal norms into statutes has frequently generated controversy and bitter contention. The controversy related to Muslim jurists' authority to carry out such interpretations is also directed at the very legitimacy of the state's intervention in incorporating *sharī'a* into the national legal system. Likewise, receptions of this new obligation through case studies of Islamic banks choosing to pay – or choosing not to pay – what is effectively a new tax is compelling. The research findings reveal that the interrelationships between Islamic law and society and various actors, institutions, and processes in Indonesia are dynamic. It also does not fit the binaries of religious versus secular, public versus private, or tradition versus modernity.¹ The modernization of *sharī'a*'s norms in the field of social transactions (*mu'āmalat*) and its implementation in Islamic financial institutions have shifted Islamic legal authority back to the epistemic community, that is, the Muslim jurists (ulama), revitalized the existing strategy of governance in Islamic legal tradition, and created a mixed legal and religious consciousness. In the context of corporate zakat norms' creation, imposition, and compliance, its explanations are as follows.²

Corporate Zakat Norms' Creation and Imposition

Although multiple Islamic legal authorities, both actors and textual sources, still prevail in Indonesia, we see that the Council of Indonesian Ulama (MUI) has increasingly shown its independence from state control. Simultaneously, MUI continually asserts itself as the institution that the government must consult concerning Islamic law in Indonesia. This development resulted from regulatory changes following Suharto's fall in 1998, where the state has become more accommodative towards Islam and

popular calls for greater *sharī'a* recognition beyond the traditional family law aspect. As a result, the state institutionalized MUI's formal role in the administration of *sharī'a* economy and *halāl* certification. These changes have intensified MUI's influence and authority in Indonesia.

As its institutional role has grown and expanded in scope, MUI exercises its authority in *fatwā* production like a quasi "legislature" of Islamic law. MUI organizes the biannual-collective *ijthād* forum called Ijtima Ulama, where Indonesian Muslims' contemporary problems are resolved by engaging with as many *fatwā* commissions and Islamic organizations as possible in its process. The MUI's *Fatwā* Commission then reviews the Ijtima Ulama resolutions before promulgating them *fatwā*. Some Ijtima Ulama resolutions that do not pass the review cannot or are not promulgated as a *fatwā*, such as in the case of the obligation of corporate zakat in Islamic law.³ The *Fatwā* Commission was reluctant to promulgate a favorable ruling on corporate zakat status reached in the 2009 Ijtima Ulama, considering its inconclusive arguments and the controversial subject matter. Thus, no such *fatwā* currently exists. Meanwhile, ulama members of MUI and other Indonesian ulama who specialize in zakat issues are torn by disagreement on corporate zakat's legal status.

Theoretically, the Ijtima Ulama's resolutions have more valid *fatwā* because they are produced by involving almost all ulama in Indonesia. MUI accordingly adopts the collective *ijtihad* and quasi legislature of Islamic law measures because, I argue, there is no official mufti office in Indonesia. Meanwhile, the government (and some community/organizations) needs a view of the Islamic law representing Islam in Indonesia. Hence, MUI has tried to balance tradition and modernity, that is, seeking to meet social and legal changes but remain within the boundaries of *sharī'a*. In unison, MUI affirms its position as the authority to administer Islamic legal tradition in Indonesia.

Despite MUI's reluctance to issue a *fatwā* on corporate zakat in Indonesia, the Zakat Law of 1999 proceeded without controversy. The Law also passed before MUI's decision in 2009, which considered this obligation, but did not result in a promulgated *fatwā*. The government then re-imposed corporate zakat in the new Zakat Law of 2011. Meanwhile, the provisions regarding corporate zakat in the Zakat Law of 2011 say that Islam, not the state, imposes a corporate zakat duty in Indonesian law. The state does not see itself as having the authority to enforce any religious obligation in Indonesia. Even so, the state is now directly involved in managing zakat in Indonesia, while it is still passive or inconsistent in other aspects of moral regulation.⁴ Therefore, state intervention in the form of zakat bureaucratization is seen as unavoidable and is best carried out by the state on the grounds of public utility justified by the principles of *sharī'a* (see explanation below).

The primary issue that emerged during the deliberation of the zakat bills in 1999 was not the subject of zakat law. Instead, it was the nature of

zakat collection (whether mandatory or voluntary), the rivalry between zakat collector agencies, and the tax-deductibility of zakat payments. Legal persons did appear as one of the zakat payers in the Zakat Law of 1999, but the origin of the concept of corporate zakat and the meaning is unverified. As for the new Zakat Law of 2011, corporate zakat status has been an issue in the drafting process at the Ministry of Religious Affairs (MORA) and during the legislature deliberation process. Corporate zakat has become subject to public discourse among the zakat stakeholders (ulama, government, zakat collector agencies, and corporate zakat payers) thanks to zakat collector agencies, namely, Dompot Dhuafa and BAZNAS, which campaign the concept. The campaign was implemented through corporate zakat and tax treatment seminars for companies and call letters sent to corporations to pay their zakat. The discussion on corporate zakat peaked in the Ijtima Ulama of 2009 when ulama tried to clarify its status in Indonesia.

From the process tracing of the imposition of this obligation, we can see that ulama, who are proponents of corporate zakat (some affiliated with MUI and BAZNAS), were involved in the drafting process of zakat bills proposed by the government (the MORA), as well as in the deliberation process in the legislature. Although legal entities subject to zakat obligation are not settled yet in Indonesia due to MUI's reluctance to promulgate the 2009 Ijtima Ulama resolution as a *fatwā*, the legislature accepted the corporate zakat norm and it, thus, remains in the new zakat law management system. The government included the corporate zakat provisions during the drafting process because ulama provided information that business entities have been considered as *shakhṣiyya i'tibārīyya* (a legal person) and thus subject to the obligation of zakat, just like a natural person. Furthermore, international ulama councils have decided on the status of corporate zakat obligation. We see this in the *fatāwā* of Al-Azhar University's jurists in 1965 and the First International Conference of Zakat in 1984. Thus, the government confirmed the ulama's authority as interpreters of Islamic law and accepted their product of interpretation (*fatāwā*) as authoritative sources for formulating statutes in Indonesia. The same explanation applies during the deliberation process, although we see more elaborative reasons, that is, zakat's potential, to buttress social welfare significantly. Nevertheless, this is achieved if corporate zakat is regulated by legislation so that there is a legal basis for collecting it.

The findings of process tracing of corporate zakat reveal another perspective on state politics in the implementation of *sharī'a* in Indonesia. I argue that the politics of *sharī'a* implementation in Indonesia are not all about adopting the Dutch legacy of reception theory. According to this theory, the government tends to develop *adat* (customary) law more intensively than Islamic law because, as far as Indonesian Muslims' practices are concerned, *adat* law has been preferred to Islamic law. Islamic law was only effective after being assimilated by *adat* law. Contemporary Indonesian

legal historians explain state policy on the implementation of *sharīʿa* in Indonesia in these terms, that is, *sharīʿa* is officially legitimate only if it has been ratified as national law. If we take into account the perspectives of the subjects of zakat and corporate zakat obligations in Indonesia, the ratification of *sharīʿa* norms as national law does not affect the legitimacy of *sharīʿa* as a doctrine that Muslims must observe. To those subjected to zakat's obligation, the meaning of *sharīʿa* as moral guidance, instead of as law, has motivated them to comply with zakat obligations in Indonesia, including the novel interpretation in mandating business entities to pay zakat.

Furthermore, there are subtle sociopolitical and religious nuances in the process of imposing corporate zakat in Indonesia. In every measure, either at the drafting and deliberating the (Islamic) law in the MORA, the legislature, or the Constitutional Court judicial review, the state and government have considered ulama's opinion. In Zakat Laws, the inclusion of corporate zakat provisions, the state's intervention in zakat implementation using BAZNAS, and prioritizing official channels, that is, BAZNAS and LAZ, in distributing zakat, is justified through *maṣlaḥa* (public utility) and *sadd al-dharīʿa* (blocking the means) arguments. These arguments emphasize maximizing zakat's potential to realize Indonesia's social welfare and maintain transparency, accountability, and public money security. This kind of policy of recognizing certain aspects of Islamic law,⁵ but excluding others,⁶ is still within the framework of Islamic law argument known as *siyāsa sharʿiyya* or *sharīʿa*-oriented policy or regulatory authority of the state as recognized by *sharīʿa*.

Some contemporary Islamic legal scholars believe that *siyāsa sharʿiyya* is a solution to the lawmaking authority conflict in Muslim countries because ulama and the government both create and share Islamic law vision (see Introduction "Corporate Zakat as a Legal Norm in Indonesia"). Following the demise of the caliphate system and the colonialization by Western countries, Muslim countries have experienced a rupture of Islamic authority because there are traditional Muslim jurists who hold the authority in interpreting *sharīʿa*, and the state which holds the authority to promulgate Islamic law (legislation/codification or *qānūn*). Thus, mainstream studies on this theme⁷ discover that most Muslim countries have replaced the old structure of *sharīʿa* authority with new legal institutions. Moreover, they see Muslims trust the new legal institutions more than the old structures of *sharīʿa* authority in law and governance because officeholders mostly make critical legal decisions of the state instead of ulama. However, my scrutiny into Indonesia's legislative and regulatory process reveals a different narrative, especially on how the ulama's opinions (*fatwā* and admonition) are taken into account in formulating public policy, such as in the case of MUI in Indonesia.

Therefore, *siyāsa sharʿiyya* has been revitalized as a governance strategy by the state and government in answering doubts about the consistency of Islamic state law based on *sharīʿa* principles. We can see this in

formulating the Zakat Law bill and its discussion in the legislature and the Constitutional Court's judicial review for aspects of marriage law in Indonesia (Chapter 2).⁸ In addition, the revitalization of the *siyāsa syar'īyya* concept also necessitates the importance of the ulama's role as an epistemic community that maintains and develops Islamic law. Hence, there has been a shift in Islamic law's authority to the epistemic community in Indonesia, namely, the Muslim jurists (ulama).

Corporate Zakat Legitimacy and Observance

Making legal entities subject to zakat in the new zakat law could have triggered resistance from the business sector because the very concept of corporate zakat itself is controversial in Islamic jurisprudence. The primary sources of *sharī'a* state that only natural persons are subject to zakat. Meanwhile, the government has been challenged to impose ethics-based taxes on the business sector, such as mandatory Corporate Social and Environmental Responsibility (CSER) enshrined in the Limited Liability Company Law No. 40 of 2007 and the Investment Law No. 25 of 2007. Despite this, corporate zakat imposition in the new Zakat Law No. 23 of 2011 has not triggered controversy within the business sector; many are unfamiliar with the provisions, and the voluntary nature of zakat collection in Indonesia may offset adverse reactions. Moreover, there is no enforcement from the government toward zakat evaders, either as individuals or corporate payers. The lack of enforcement by the government reinforces "ignorance" towards the concept of corporate zakat. Although the Law defines zakat as a (religious) duty imposed on individuals and legal entities and mentions both as the subject of zakat law, its implementation becomes personal. Usually, it depends on the moral and legal consciousness of each zakat payer.

Regarding the phenomena of corporate zakat payments by Islamic commercial banks in Indonesia, the fact is that the many ulama members of MUI, who serve as superintendents of *sharī'a* in Islamic financial services, turn out to have little effect on the bank's decision to pay their zakat. This is because the status of corporate zakat as an obligation in Islamic law in Indonesia is still ambiguous. As a result, the existence of the Zakat Law and the *sharī'a* opinions of the *Sharī'a* Supervisory Board has little if any influence on the Islamic commercial banks' compliance with corporate zakat (except in the case of BMI). From the banking sector case study, it was found that the views of Islamic commercial banks on the legitimacy of provisions of corporate zakat are affected by a combination of two or three factors: (1) the type of business (i.e., as *sharī'a*-related industries that must abide by *sharī'a* moral and legal values as well as the imperative to contribute to the public good); (2) their attitudes towards the principles of zakat (i.e., an obligation in Islam to purify a Muslim's property, so that the issue is not whether the subject of zakat is an individual or legal entity); (3) the size

of the company (i.e., the amount of profit that is deemed to be eligible to pay zakat); and (4) benchmarking with other competitors. Also, it reveals that a combination of factors number one and two has become the most significant drivers for paying corporate zakat.

Islamic religious ethics (factors number one and two) appear as the most salient reason for Islamic commercial banks' compliance with corporate zakat obligations, which confirms one of the characteristics of *sharī'a* as self-executing norms. The self-executing norms of *sharī'a* mean that mere injunctions about zakat obligations in the Qur'ān apply of their force and can be addressed directly, without the intermediation of *fatwā/sharī'a* opinions or a legal and regulatory framework. Islamic commercial banks' management perceives corporate zakat's novel obligation to fall under the general obligation of zakat imposed on Muslims. So, when the devout decision-makers of the Islamic commercial banks were aware of command about paying zakat in the Qur'ān and Ḥādīth, they feel bound by that command as if it were addressed directly to them. Consequently, even though corporations' liability as a zakat payer is still debated, Islamic commercial banks' management would integrate their moral conscience on zakat obligation into their corporate decisions.

If the observance of corporate zakat made by Islamic commercial banks requires no intermediary law, its implementation (channeling and distributing corporate zakat funds) prompts the banks to abide by the state's rules. Islamic commercial banks have to acknowledge the state's authority in regulating and overseeing zakat administration in Indonesia, which is imposed through the Zakat Law and Islamic banking regulations for the sake of good corporate governance. Therefore, Islamic commercial banks must channel their corporate zakat funds to the National Zakat Agency (BAZNAS) or a non-governmental zakat agency (LAZ). As a financial institution, an Islamic commercial bank cannot directly distribute its corporate zakat funds since BAZNAS and LAZs are Indonesia's official zakat management platforms under the Zakat Law No. 23 of 2011. It must use this zakat intermediary to not conflate zakat with its core business as a financial intermediary, as per the Islamic Banking Law No. 21 of 2008. In general, voluntary payment of zakat creates a parallel system in payment and distribution,⁹ namely, the traditional payment method outside BAZNAS and LAZ. Zakat payers directly hand their zakat over beneficiaries or unofficial agencies such as *Kyai* or mosque administrators. Conversely, corporate zakat payers must use official channels for payment and distribution. This condition requires the state to provide a legal and regulatory framework that is more responsive to corporate zakat payers' needs, especially their zakat funds for corporate social programs.

Despite the Islamic commercial banks' observance of zakat's legal and regulatory framework, there are reservations from some Islamic commercial banks that do not have their LAZ regarding BAZNAS's role as the collector of zakat. This reservation perpetuates the perennial debate

on the extent of state intervention in the zakat administration since the Dutch colonial.¹⁰ BAZNAS sets a collection method for corporate zakat that requires all corporate zakat funds to be transferred to BAZNAS's account first before being utilized by the banks for their social programs. From the case studies, it turns out that the ideal method of corporate zakat collection for Islamic commercial banks which do not have a LAZ is that the banks retain the proceeds and report the amounts of proceeds for the given year to BAZNAS. Thus, my study provides empirical data to inform the government how to tackle the unintended effects and inefficiencies caused by zakat bureaucratization in Indonesia.¹¹ It suggests that the government should focus more on its role as the regulator instead of the regulator-cum-zakat collector in Indonesia.

Then, is the government willing to give civil society more space in managing zakat and other Islamic social finances? In recent developments, the government is inclined to exercise control over administering any Islamic legal traditions where wealth is involved.¹² As a principal, the strategy, adopted by the government, is to enlarge the structure of its bureaucratic agents, in this case, the MORA, form a new structure under its bureaucratic agents, or make extensions of the agent in carrying out the business aspects of the Islamic bureaucracy in Indonesia.¹³ As a result, we see new agencies in the MORA's organizational structure to take care of *haji* finance and *halal* certification.¹⁴ Likewise, we witness the establishment of BAZNAS and the Indonesian *Waqf* Board (*Badan Wakaf Indonesia*, BWI) as an extension of MORA in the field of zakat and *waqf*. Lately, three banks' subjects of this research, BSM, BNIS, and BRIS, were also recently merged by the government to become *Bank Syariah Indonesia* on February 1, 2021. Even though their status is not clear as state-owned (*Badan Usaha Milik Negara*, BUMN),¹⁵ the merger of three subsidiary banks from BUMN banks (Bank Mandiri, Bank BNI, and Bank BRI) shows that the government does not want to be a mere regulator of the lucrative business of the *sharia* economy in Indonesia.

The investigation into the views of corporations regarding the target of corporate zakat obligations also prompts a further examination of other Islamic commercial banks' motives when complying with this obligation. During data collection, informants reported (anecdotally) cases where corporate zakat funds overlapped with corporate social responsibility (CSR) funds. Just like the ambiguity surrounding its legal status, Islamic laws in Indonesia (*fatwā/sharī'a* opinions or zakat, Islamic banking, and corporate laws) are silent on the appropriate uses of corporate zakat. Meanwhile, CSR practice is becoming common in Indonesia, including within the Islamic financial service sector, as shown in their Good Corporate Governance reports or CSR reports. From the case studies, the Islamic commercial banks' stand on corporate zakat as a CSR source is like a continuum of affirmation, ambivalence, and opposition. Some banks hesitate to affirm that corporate zakat is their CSR because of the distinct values underlying

zakat and CSR. To them, zakat is motivated by Islamic religious ethics, while secular ethics generate CSR. However, in practice, corporate zakat funds have become an integral part of Islamic commercial banks' CSR in Indonesia. Despite this, the Islamic commercial banks do not mix corporate zakat funds with CSR funds because they believe that zakat should only be paid to the traditional beneficiaries.

In contrast, CSR can be used for social purposes, primarily when the CSR funds derive from non-*ḥalāl* income, such as interest or penalties. Therefore, religious ethics that motivate Muslims to pay zakat have been instrumental in the provision of social practices undertaken by *sharī'a*-related business entities and, at the same time, go beyond the concept of CSR in the conventional sense. Hence, the implementation of CSR in Islamic commercial banks, with corporate zakat and Islamic charity funds being part of it, is not only the internalization of CSR in the conventional sense as core values of their business but is also inspired by the *sharī'a* embodiment of welfare value (*maṣlaḥa*), which is guided by the objectives of *sharī'a* (*maqāṣid al-sharī'a*).

Future Research on Islamic Law and Society in Indonesia

This book is one of the very few empirical studies that examine the production of a novel legal norm of Islamic economics, that is, corporate zakat obligation, and the initially mystifying issue of why Islamic corporations choose to comply with it when neither the enabling legislation nor the Islamic jurisprudential basis for doing so is strong. Understanding how to persuade corporations to engage in social philanthropy is an important policy issue in the Islamic world because significant potential welfare resources are involved. The challenge is how to reconcile current public policy with Islamic legitimacy. As seen, there are fundamental differences of opinion among ulama based on their respective ideological positions and jurisprudential commitments. Thus, challenges to the corporate zakat validity would remain as long as there are many scholarly opinions. That Indonesia, a non-Islamic state, has imposed on such interpretation (i.e., corporate zakat is a valid concept and an obligation) by mobilizing Muslim thinkers to endorse legal fiction in Islamic jurisprudence and simultaneously keeping its payment voluntary is remarkable. The Indonesian experience has shown that to comprehend *sharī'a* incorporation into Muslim countries' modern legal systems is insufficient through dichotomous thinking.

As explained in the Introduction, studies on the inter-relation between Islamic law, particularly the *sharī'a* economy aspect, and society in Indonesia¹⁶ have analyzed the non-legal factors influencing the Islamization of law or the formation of localized Islamic legal norms in Indonesia. However, when these studies also investigate Indonesian Muslims' experience with Islamic law, they sometimes fall to dichotomous thinking in examining the impact of *sharī'a* incorporation and imposition due to the

lack of empirical evidence. Therefore, in assessing beyond the theoretical implications of *sharī'a* incorporation into the Indonesian legal system, I have utilized empirical legal research to test Muslim responses on their experiences when complying with Islamic law amid multiple Islamic legal norms, actors, and sources to understand their conscience of what constitutes Islamic law: *sharī'a*, *fiqh*, or “Islamic” statute; and why? I argue that empirical legal research in law and society can fill the gap left by previous research related to the *sharī'a* economy aspect in Indonesia.

Although the discussion of this book is mainly related to Islamic economic law in Indonesia, its findings are tangentially relevant for exploring other aspects of state-regulated implementations of Islamic law in Indonesia as it speaks into the ongoing debate on Islamic law and society in Indonesia. I observe among essential issues of Islamic law in Indonesia that need to be investigated using the empirical legal research method include the following:

First, it is the authority of Islamic law in Indonesia, especially the influence of MUI's *fatāwā* on state law/government policies and public behavior. Due to the state mufti vacancy in Indonesia, both the government and society have positioned MUI as the Indonesian Islamic law authority. De jure recognition and granted institutional roles, which initially only focused on the *sharī'a* economy, later expanded to other aspects, including authority in constituting Islamic law in public health matters. The latest example of MUI's role in this aspect is handling the COVID outbreak through the provision of *fatāwā* on worship procedures, the burial service of Muslim corpses, and the use of a vaccine.¹⁷ However, MUI's *fatwā* related to COVID-19 vaccines, especially of AstraZeneca,¹⁸ shows MUI's ambiguous support to the government's handling of the pandemic. On the one hand, MUI declared that the vaccine is *ḥarām* because it contained pork in the production process. On the other hand, MUI stated that it was due to an emergency (COVID-19 pandemic) that the vaccine is permissible.¹⁹ Public health experts are concerned that the MUI's attitude will increase vaccine hesitancy against the COVID-19 vaccination program²⁰ and make it difficult to deal with this pandemic, just like in the case of the MUI's *fatwā* on the Measles and Rubella (MR) vaccine in 2017²¹ and the stagnant rate of MR vaccination after that.²²

Second, it is the high intensity in *sharī'a* bureaucratization in Indonesia, especially in the administration of the Islamic legal tradition, which involves wealth, and its unintended effects and inefficiencies. After the state officially regulated the zakat administration in 1999 and *waqf* in 2004, it is also directly involved in managing zakat and *waqf* management through BAZNAS and BWI as extensions of its bureaucratic agent, the MORA. In the last decade, the symptoms of *sharī'a* economy bureaucratization have snowballed; the MORA adds more bodies to its organizational structure to manage *Hajj* finances (BPKH in 2014) and organizes certification of *halāl* products and services (BPJPH in 2017).²³ The National Committee

for *Sharī'a* Economy and Finance (KNKS, later KNEKS) was established in 2016 to enhance the development of the *sharī'a* economic and financial ecosystem to support national economic development. This committee contains bureaucratic government agents related to the economy and development, including the Ministry of Finance, Ministry of SOEs, Bank Indonesia, Financial Services Authority, and Ministry of Cooperatives and SMEs. As a result, we then see the government: managing Hajj finances and investing them into *sharī'a*-compliant businesses; campaign for cash *waqf* linked to the purchase of Islamic financial certificates (*Sukuk*) issued by the government for development costs; and the establishment of the first “state-owned” Islamic bank with the merger of three Islamic banks whose majority state-owned banks own shares.

Suppose previous research concludes that the bureaucratization of the *sharī'a* economy is seen as unavoidable and is best carried out by the state on the grounds of public utility. In that case, the condition of the state development budget that relies on foreign debt and the impact of the COVID-19 pandemic on the Indonesian economy makes it difficult to deny public allegations that the government utilizes the lucrative business of the Islamic economy for development funds. Considering bureaucratic problems²⁴ and Islamization of politics/politicization of Islam²⁵ in Indonesia, the unintended effects and inefficiencies of the bureaucratization of the *sharī'a* economy in Indonesia need to be investigated. If this book finds that the government’s dominance in zakat management has dwarfed the role of civil society and created disincentives for corporate zakat payments by Islamic banks, it is also necessary to investigate, for example, the bureaucratization of *waqf* in the form of cash *waqf* linked to *Sukuk*. The government’s *Sukuk* investment has so far been too focused on infrastructure development so that the benefits are considered to be enjoyed by the upper-middle class. Meanwhile, the lower-middle-class Muslims in Indonesia, who work as farmers, fishers, or traders, need access to interest-free micro-finance, which can be supported by government cash *waqf* management.

Besides, the political aspects of the bureaucratization of the *sharī'a* economy in Indonesia, not only the government’s motives but also the motives of *sharī'a* economic actors, need to be examined in depth. The demand to make Islam the basis of the state and/or the full implementation of *sharī'a* in Indonesia does not show any signs of fading even after more than 75 years of debate over the Jakarta Charter ended by accepting Pancasila as the state ideology. In his study of the causes of the Islamization of politics in Indonesia after the 1998 reformation, Michael Buehler found that pressures from the Islamist social movements had caused many local governments to adopt *sharī'a* bylaws. These regional leaders came from political parties affiliated with Suharto’s New Order which were against political Islam. However, to win votes of the Islamist social movement pouches, these politicians then promised *sharī'a* implementation by

promulgating *sharī'a* bylaws. Buehler also found that zakat is one aspect of *sharī'a* bylaws issued by many incumbent regional heads who will run for the second election. They see zakat as a new revenue stream that can be used to consolidate political power.²⁶

Last but not least, the mix of legal and/or *sharī'a* consciousness leads to compliance with Islamic law in Indonesia. The state regulation of *sharī'a* in Indonesia is more concerned with its bureaucratic aspects. In contrast, the legal substance is still referred to as Islamic jurisprudence (*fiqh*) or the MUI *fatāwā*, especially for *sharī'a* principles in Islamic Financial Institutions. Even so, we can find several other compliances with *sharī'a* that are regulated by the state even though sanctions for violators are not regulated by legislation, as is the compliance with the corporate zakat phenomenon. A case in point is the payment of income zakat, another novel interpretation of zakat, subjected to individual Muslims who have a fixed income above the *niṣāb*, that is, IDR 6,650,000 per month in 2021 (USD 459). Compliance with zakat income obligations is found in many government agencies and BUMN/BUMD throughout Indonesia. Payment mainly relies on directives from the leaders where they work because zakat payments in zakat law in Indonesia are voluntary. Payments for other forms of Islamic social finance such as *infak*, *sedekah*, and *waqf* are also increasing in line with the ongoing campaigns carried out by the government and civil society organizations. This phenomenon is worth investigating not only from the aspect of legal or *sharī'a* consciousness but also from the aspect of the subject's understanding of the objectives of *sharī'a* (*maqāṣid sharī'a*). In Malaysia, according to Sloane-White, corporate elites' understanding of *sharī'a* are embodied in the form of applying its principles – such as the social obligation (*farḍ al-kifāya*), which is understood in broad responsibility to contribute to the public good (*maslaḥa*) – into business operations. They used their shared *sharī'a* vision to sustain the critical role of Islam in society and the economy. Also, Islam is the solution to national and ethnic problems in Malaysia by campaigning for the concept of Islamic CSR which comes from zakat, corporate zakat, and other Islamic charities (although, in practice, Sloane-White also found that several CSR practices have proselytizing effects).²⁷ What about Indonesian Muslims: does this phenomenon indicate that they are ready to help the government succeed in economic and social development and make peace with the history of the failure of the Jakarta Charter?

Notes

- 1 Cf. Tamir Moustafa, *Constituting Religion: Islam, Liberal Rights, and the Malaysian State* (New York: Cambridge University Press, 2018); Tamir Moustafa, "Judging in God's Name: State Power, Secularism, and the Politics of Islamic Law in Malaysia," *Oxford Journal of Law and Religion* 3, no. 1 (2014): 152–167.

- 2 Cf. Tamir Moustafa and Jeffrey A. Sachs, Jeffrey Adam, "Law and Society Review Special Issue Introduction: Islamic Law and Society, and the State," *Law and Society Review* 52, no. 3 (2018): 560–573.
- 3 See Annex 1 for details on ijtimia ulama's resolution and their status from 2003 to 2009. See also for their analysis on Alfitri, "Bureaucratizing *Fatwā* in Indonesia: The Council of Indonesian Ulama and Its Quasi-Legislative Power," *Ummuna Journal of Islamic Studies* 24, no. 2 (2020): 367–397.
- 4 See Tim Lindsey, *Islam, Law, and the State in Southeast Asia – Volume I: Indonesia* (London: I.B. Tauris, 2012), 173.
- 5 Namely, corporations are subject to zakat obligation, or the government holds the authority in zakat management in Indonesia.
- 6 Namely, corporations cannot be subject to zakat obligation, or the state cannot enforce the obligation of zakat by penalizing the zakat evaders.
- 7 See, for example, Norman Anderson, *Law Reform in the Muslim World* (London: Athlone Press, 1976), 17, 38; Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 209–254; Aharon Layish, "The Transformation of the *Sharia* from Jurists Law to Statutory Law in the Contemporary Muslim World," *Die Welt des Islams* 44, no. 1 (2004): 85–113.
- 8 For aspects of *hajj* management, see, for example, Alfitri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?," *Asian Journal of Comparative Law* 13, no. 2 (2018): 397–401.
- 9 Lindsey, *Islam*, 173.
- 10 Lindsey, *Islam*, 173.
- 11 See Yuksel Sezgin and Mirjam Klunker, "Regulation of 'Religion' and the 'Religious': The Politics of Judicialization and Bureaucratization in India and Indonesia," *Comparative Studies in Society and History* 56, no. 2 (2014): 448–478.
- 12 Tim Lindsey, "Between Piety and Prudence: State Syariah and the Regulation of Islamic Banking in Indonesia," *Sydney Law Review* 34, no. 107 (2012), 127; see also Lindsey, *Islam, Law, and the State*, 173.
- 13 See also Sezgin and Klunker, "Regulation of 'Religion'."
- 14 See Alfitri, "Religion and Constitutional Practices," 396–401.
- 15 Business.com, "Sejarah Baru Bank Syariah Indonesia (BRIS) [sic. BSI], Naik Kelas Jadi BUMN?" <https://finansial.bisnis.com/read/20210201/90/1350417/sejarah-baru-bank-syariah-indonesia-bris-naik-kelas-jadi-bumn>; Republika.co.id, "Bank Syariah Indonesia Perlu Kepastian Status," <https://www.republika.co.id/berita/ql6cya370/bank-syariah-indonesia-perlu-kepastian-status>.
- 16 See, for example, Lindsey, *Islam*; Arskal Salim, *Challenging the Secular State: the Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008); Jan Michiel Otto (ed.), *Shari'a Incorporated: A Comparative Overview of the Legal System of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010).
- 17 Islamic Law Blog of the Islamic Legal Studies Program – Harvard Law School is a good resource for investigating the topic. This blog compiles and updates media outlets, makes cross-references to other countries' situations for the same topic, and provides links to related research results to scientific journals. See, for example, the page for searching results under keywords "covid 19," "fatwa," and "Indonesia": <https://islamiclaw.blog/category/indonesia-2/>.
- 18 Majelis Ulama Indonesia, "Fatwa MUI: Hukum Penggunaan Vaksin Covid-19 Produk AstraZeneca," <https://mui.or.id/produk/fatwa/29883/fatwa-mui-hukum-penggunaan-vaksin-covid-19-produk-astrazeneca/>.

- 19 Committee for Handling Covid-19 and National Economic Recovery, “Fatwa MUI: Penggunaan Vaksin Covid-19 AstraZeneca Pada Saat ini Dibolehkan (Mubah),” <https://covid19.go.id/edukasi/masyarakat-umum/fatwa-mui-penggunaan-vaksin-covid-19-astrazeneca-pada-saat-ini-dibolehkan-mubah>.
- 20 Najmah, Sharyn Graham Davies and Kusnan, “What’s behind COVID-19 Vaccine Hesitancy in Indonesia? Apa yang melatar belakangi keraguan masyarakat Indonesia untuk di vaksin Covid-19?” in *New Mandala*: <https://www.newmandala.org/whats-behind-covid-19-vaccine-hesitancy-in-indonesia/>.
- 21 LPPOM-MUI, “Vaksin MR Haram, tapi Terpaksa Boleh Digunakan,” <https://www.halalmui.org/mui14/main/detail/vaksin-mr-haram-tapi-terpaksa-boleh-digunakan>; Kementerian Kesehatan, “Fatwa MUI Bolehkan Imunisasi Campak dan Rubella, Kemenkes Fokus Turunkan Beban dan Dampak Penyakit Tersebut,” <https://sehatnegeriku.kemkes.go.id/baca/rilis-media/20180823/0727524/imunisasi-campak-dan-rubella-dibolehkan-mui-kemenkes-fokus-pada-beban-dan-dampak-penyakit-tersebut/>.
- 22 Harapan Harapan, et al., “Religion and Measles Vaccination in Indonesia, 1991–2017,” *American Journal of Preventive Medicine* 60, no. 1 (2021): S44–S52; Paul Pronyk, et al., “Vaccine hesitancy in Indonesia,” *The Lancet Planetary Health* 3, no. 3 (2019): E114–E115.
- 23 Alfitri, “Religion and Constitutional Practices,” 396–401.
- 24 See, for example, M. Turner, E. Prasojo, and R. Sumarwono, “The Challenge of Reforming Big Bureaucracy in Indonesia,” *Policy Studies* (2019): 1–19.
- 25 See for the case of Islamization of politics in Indonesia after the fall of Soeharto’s New Order military regime in 1998 which was marked by the proliferation of *shari’a* regulations in many different parts of Indonesia in Michael Buehler, *The Politics of Shari’a Law: Islamist Activists and the State in Democratizing Indonesia* (Cambridge, UK: Cambridge University Press).
- 26 Michael Buehler, “The Rise of Shari’a By-Laws in Indonesian Districts: An Indication for Changing Patterns of Power Accumulation and Political Corruption,” *South East Asia Research* 16, no. 2 (2008): 255–285.
- 27 Patricia Sloane-White, *Corporate Islam: Sharia and the Modern Workplace* (New York, NY: Cambridge University Press, 2017), 160–183.

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GLOSSARY

- adat** traditional custom, traditional customary law
- amil** (Ar. *‘āmil*) collector of zakat
- asnāf** eight categories of people qualified to receive zakat; they are poor people (*al-fuqarā*), a destitute person (*al-masākīn*), *zakat collectors* (*al-‘āmilin*), a recent convert to Islam (*al-mu’allafa qulūbuhum*), a freed/runaway slave who is in need (*al-riqāb*), a destitute debtor (*al-ghārimīn*), a person acting in God’s cause (*fī sabīlillāh*), and a wayfarer who is lost or destitute (*ibn al-sabīl*)
- badan hukum** (Ar. *shakhsiyya i’tibāriyya*) legal person
- dakwah** (Ar. *da’wah*) Islamic missionary activity or outreach, for example, preaching and proselytizing
- fatwā** (Ar. Pl. *fatāwa*) legal opinion of a qualified Islamic jurist
- fiqh** Islamic jurisprudence
- gharar** (Ar.) fraud, deceit, risk (as in financial risk)
- Hadīth** (Ar.) traditions, the recorded words, and deeds of the Prophet Muhammad, one of the primary sources of Islam
- halal** (Ar. *ḥalāl*) permissible
- haram** (Ar. *ḥarām*) prohibited; forbidden
- ḥawl** (Ar.) one year of property/wealth ownership as the basis in determining zakat obligation
- ‘ijmā** (Ar.) consensus (of religious scholars)
- ijtihād** (Ar.) intellectual exertion by a qualified Islamic law scholar; the process of making a legal decision by independent interpretation of Islamic legal sources; legal reasoning and interpretation of *sharī’a*
- Ijtima Ulama** (Ar. *Ijtimā’ al-‘ulamā’*) a biannual collective *ijtihād* forum for all *Fatwā* Commissions of the Council of Indonesian Ulama
- infak** (Ar. *infāq*) charity; *ṣadaqa* (giving) for the family, providing the family with its basic needs
- Kompilasi Hukum Islam** Compilation of Islamic Law, the 1991 Indonesian codification of Islamic law on marriage, inheritance, and *waqf*
- Kyai, Kiai, Kiyai** (Javanese) honorific commonly given to an ulama or head of *pesantren* (traditional Islamic school)
- madhhab** (Ar. Pl. *madhāhib*) school of Islamic legal thought

mafsada (Ar.) harm; corruption

maqāṣid al-sharīʿa (Ar.) aims and objectives of the law in Islam

maṣlaḥa (Ar.) public interest or benefit

miskin (Ar. *miskīn*) poor

muʿamalah, muamalat (Ar. *muʿāmala*) in Islamic legal theory, aspects of life dealing with human relationships and the physical world, mainly commerce and trade, that does not fall directly under the category of *ʿibāda* or ritual worship; often used in the Islamic finance context

muʿallaf (Ar.) recent convert to Islam

mudāraba muqayyad (Ar.) *mudāraba* contract with a specific type of venture

mudharabah (Ar. *mudāraba*) Islamic banking contract based on a profit and loss sharing concept between a depositor and the bank, or the bank and its business venture partner

mufti (Ar.) Muslim jurist capable of giving an authoritative legal opinion or *fatwā*

mujtahid (Ar.) Islamic legal scholar qualified to exercise independent reasoning

murabahah (Ar. *murābaha*) Islamic banking contract where the seller sells an asset to another person adding some profit or mark-up thereon that is known to the buyer

mustahik (Ar. *mustahiqq*) beneficiary of zakat

musyarakah (Ar. *mushāraka*) participatory mode of financing

muzakki (Ar. *muzakkī*) payer of zakat

nikah siri, nikah bawah tangan “secretive marriage”; marriage according to religious rites but not registered with the state

nishab (Ar. *niṣāb*) the minimum amount of savings or capital or product owned by a Muslim to be obliged to pay *zakāt al-māl* (mandatory annual tithe on wealth)

Ormas, Organisasi Masyarakat mass organization

Pengadilan Agama Religious courts (of the first instance)

qarḍ al-ḥasan (Ar.) social lending or benevolence loan

riba (Ar. *ribā*) forbidden interest

sadaqah, shodaqoh, sedekah (Ar. *ṣadaqa*) voluntary charity or giving beyond that which is obligatory (differentiated from zakat)

sadd al-dharīʿa (Ar.) blocking the means

Sharīʿa Islamic law understood as norms and rules derived from the Qurʾan and Hadīth (the Prophet Muhammad traditions)

siyāsa sharʿiyya statecraft or governance under *sharīʿa*, a doctrine allowing Muslim rulers to take any acts, either in legislation or adjudication, to supplement *sharīʿa* necessary for the public good, as long as *sharīʿa* is not infringed or it does not prohibit the acts

tausiyah (Ar. *tawṣiyya*) general opinions or recommendations that differ from a *fatwā* (legal opinion of ulama) because they can be produced by people other than a *mufti*

ulama (Ar. *‘ulamā*) Muslim religious scholars, plural of *‘ālim*; the term “ulama” is often used for the singular in Indonesia

Undang-Undang Law/Act; statute (produced by the National Legislature, the DPR)

uṣūl al-fiqh (Ar.) traditional theory of Islamic law

zakat (Ar. *zakāt*) Islamic alms-giving; charitable contribution required to be made by a Muslim under Islamic law; Islamic alms-giving

zakāt al-māl (Ar.) a form of zakat; mandatory annual tithe levied on Muslims whose wealth exceeds a threshold called *niṣāb*, usually the equivalent of 85 grams of gold

zakat fitrah (Ar. *zakāt al-fiṭr*) a form of zakat; comprising a certain amount of rice/grain or its equivalent monetary value, payable annually by a Muslim during the month of Ramadan for religious and charitable purposes

ACRONYMS

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institutions
ASGM	Annual Shareholders General Meeting
BAZIS	Badan Amil Zakat, Infak dan Sedekah (Zakat, Infak and Sedekah Collection Agency)
BAZNAS	Badan Amil Zakat National (National Zakat Collection Agency)
BAZ	Badan Amil Zakat (Zakat Collection Agency; before BAZNAS Established)
BMI	Bank Muamalat Indonesia
BMS	Bank Mega Syariah
BNIS	Bank Negara Indonesia Syariah
BPS	Bank Panin Syariah
BRIS	Bank Rakyat Indonesia Syariah
BSB	Bank Syariah Bukopin
BSM	Bank Syariah Mandiri
BCAS	Bank Central Asia Syariah
BJBS	Bank Jawa Barat Syariah
BVS	Bank Victoria Syariah
BMSI	Bank Maybank Syariah Indonesia
BNI	Bank Negara Indonesia
BRI	Bank Rakyat Indonesia
BMM	Baitulmaal Muamalat
BUMN	Badan Usaha Milik Negara (State-owned Enterprises)
BUS	Bank Umum Syariah (<i>Shari'ah</i> Commercial Bank)
CLD-KHI	Counter Legal Draft-Kompilasi Hukum Islam
CEO	Chief Executive Officer
CSER	Corporate Social and Environmental Responsibility
CSR	Corporate Social Responsibility
DMI	Dewan Masjid Indonesia (The Council of Indonesian Mosque)
Ditjen	Direktorat Jenderal (Directorate General)

DDII	Dewan Dakwah Islamiyah Indonesia (Indonesian Islamic Da'wah Council)
DPR	Dewan Perwakilan Rakyat (People's Representative Council, the National Legislature)
DPS	Dewan Pengawas Syariah (<i>Sharī'a</i> Supervisory Board)
DSN-MUI	Dewan Syariah Nasional – Majelis Ulama Indonesia (National <i>Sharī'a</i> Board of the Council of Indonesian Ulama)
FOZ	Forum Zakat (Zakat Forum)
FPI	Front Pembela Islam (Islamic Defender Front)
GCG	Good Corporate Governance
HIPPI	Himpunan Pengusaha Pribumi Indonesia (Indonesian Indigenous Entrepreneurs Association)
IAIN	Institut Agama Islam Negeri (State Institute for Islamic Studies)
ICMI	Ikatan Cendekiawan Muslim Indonesia (the Association of Indonesia Muslim Intellectuals)
IDR	Indonesian Rupiah
IFI	Islamic Financial Institution
Inpres	Instruksi Presiden (Presidential Instruction)
IPHI	Ikatan Persaudaraan Haji Indonesia (Indonesian Hajj Brotherhood Association)
KADIN	Kamar Dagang dan Industri Indonesia (the Indonesian Chamber of Commerce and Industry)
KF-MUI	Komisi Fatwa Majelis Ulama Indonesia (<i>Fatwā</i> Commission of the Council of Indonesian Ulama)
KHES	Kompilasi Hukum Ekonomi Syariah (Compilation of <i>Sharī'a</i> Economic Law)
KHI	Kompilasi Hukum Islam (Compilation of Islamic Law)
Laporan SPDZ	Laporan Sumber Pendapatan Dana Zakat (the Report of Zakat Fund Sources)
Laporan SPD-ZIS	Laporan Sumber Pendapatan Dana Zakat Infak dan Sedekah (the Report of Zakat-Infak; Sedekah Fund Sources)
LAZ	Lembaga Amil Zakat (Zakat Collection Institute (NGO initiatives))
LAZIS	Lembaga Amil Zakat Infak dan Sedekah (Zakat-Infak Sedekah Collection Institute (NGO initiatives))
MA	Mahkamah Agung (Supreme Court)
MASB	Malaysian Accounting Standard Board
MK	Mahkamah Konstitusi (Constitutional Court)
MORA	the Ministry of Religious Affairs
MPR	Majelis Permusyawaratan Rakyat (People's Consultative Assembly)

MUI	Majelis Ulama Indonesia (The Council of Indonesian Ulama)
NGO	Non-Governmental Organization
NU	Nahdlatul Ulama
NPWZ	Nomor Pokok Wajib Zakat (Zakat payer Identification Number)
OIC	the Organization of the Islamic Conference
PIRAC	Public Interest and Research Advocacy Center
PKPU	Pos Keadilan Peduli Umat (Justice Post of Muslim Care)
PKS	Partai Keadilan Sejahtera (Prosperous Justice Party)
PPIM	Pusat Pengkajian Islam dan Masyarakat (the Center for Islamic and Societal Studies)
Polri	Kepolisian Republik Indonesia (Indonesian National Police)
PP	Peraturan Pemerintah (Government Regulation)
PSAK	Pernyataan Standar Akuntansi Keuangan (Financial Accounting Standards)
PT	Perseroan Terbatas (Proprietary Limited (Pty Ltd.)
RKAT	Rencana Kerja dan Anggaran Tahunan (Work Plan and Annual Budge)
UPZ	Unit Pengumpul Zakat (Zakat Collector Unit (an Extension of BAZNAS at Mosques, Offices, or Businesses))
UIN	Universitas Islam Negeri (State Islamic University)
UU	Undang-Undang (Law/Act)
UUD	Undang-Undang Dasar 1945 (1945 Constitution of Indonesia)
USD	United States Dollar
UUS	Unit Usaha Syariah (<i>Sharīʿa</i> Business Unit (of a conventional Bank))
TVRI	Televisi Republik Indonesia (Indonesian Republic Television)
TNI	Tentara Nasional Indonesia (Indonesian National Army)
ZIS	Zakat, Infak, and Sedekah

ANNEX I: DECISIONS OF IJTIMA ULAMA AND THEIR STATUS¹

<i>No.</i>	<i>Subject matters</i>	<i>Rulings</i>	<i>Promulgated as Fatwā</i>	<i>Comments by Alfiri</i>
First Ijtima Ulama, 2003, Jakarta				
1	Bank interest	1 It is <i>ribā</i>, thus prohibited (<i>ḥarām</i>) 2 Muslims, in whose area is available a branch of an Islamic bank, cannot make transactions based on interest. Muslims can do business with conventional banks based on necessity/need (<i>ḍarurah/ḥajjah</i>) if not available	Yes No. 1 the Year 2004 concerning Bank Interest (<i>Bunga</i>) The same rulings as the 2003 decision	a The KF-MUI met to discuss further this 2003 decision on January 3, 2004, January 17, 2004, and January 24, 2004. The promulgation of the <i>fatwā</i> was signed on January 24, 2004
2	The Determination of the First day of Ramadan, Shawwal, and Dhulhijjah	1 The determination is done using moonighting (<i>ru'ya</i>) and astronomical calculation (<i>ḥisāb</i>) 2 all Muslims in Indonesia are obliged to abide by the decision of the government with regards to the determination 3 To determine the first day of Ramadan, Shawwal, and Dhulhijjah, the Minister of Religious Affairs is obliged to consult MUI, Islamic social organizations, and concern institutions	Yes No. 2 the Year 2004 concerning the determination of the first day of Ramadan, Shawwal, and Dhulhijjah The same rulings as the 2003 decision. Yet, the <i>fatwā</i> adds "by the government <i>qua</i> the Minister of Religious Affairs and the determination is effective nationally"; Moreover, point (4) "the Minister can use the result of moonighting from the area outside Indonesian territory but with the same <i>matla'</i> (the position of the rising and setting Sun) as a reference"	a The KF-MUI met on January 24, 2004, and signed the promulgation of <i>fatwā</i> on the date; b In 1980, the KF-MUI has issued a <i>fatwā</i> on this matter. The rulings were (1) regarding the determination of first Ramadan and Shawwal, Muslims should follow the majority opinion in <i>fiqh</i>, i.e., using <i>matla'</i> as the point of reference; (2) unlike the determination of the first day of Ramadan and Shawwal, the first day of Dhulhijjah is determined based on <i>matla'</i> of each country; hence, Indonesia cannot follow other countries in determining the Eid al-Adha festival day
3	Terrorism	1 Committing an act of terror, either perpetrated by the individual, group, or state, is prohibited (<i>ḥarām</i>) 2 Performing <i>jihād</i> is obligatory (<i>wājib</i>)	Yes No. 3 the Year 2004 concerning Terrorism It is the same rulings as the 2003 decision	a The KF-MUI met on January 24, 2004, and signed the promulgation of a <i>fatwā</i> on the date the <i>fatwā</i> was also signed by the Board of Director b Like other Islamic organizations, e.g., the Organization of Islamic Conference, MUI wants to clarify that the concept of <i>jihād</i> is not the same as terrorism c

(Continued)

No.	Subject matters	Rulings	Promulgated as Fatwā	Comments by Alfitri
Second Ijtima Ulama, 2006, Ponogoro, East Java				
4	Commission A – Issues of Nationalism (<i>Masā'il Aṣṣīyā Waṭāniyya</i>)			
4.a	Strengthening the form and existence of the Republic of Indonesia (NKRI)	(point 1–2 simply statements) 3 Since the Indonesian territory is populated mainly by Muslims, we are obliged to maintain the NKRI integrity from any form of treason and separatist movements 4 The state is obliged to take any necessary measures to prevent treason and separatist movements such as creating justice, security, prosperity, and raising awareness among the perpetrators 5 Any form of treason and separatist movements falls under the category of <i>bughāt</i> (treason) crime, and <i>bughāt</i> is prohibited and must be eradicated by the state	No	It is common in MUI to respond to Indonesia's current sociopolitical situation by issuing a <i>fatwā</i> or admonition The background of this decision was separatist movements in the Moluccas and Papua
4.b	Harmonization of a religious frame of thoughts in a nationalist context	(point 1–2 simply statements) 3 Values brought by modernization and globalization that accord with Islamic doctrines may be accepted as universal Islamic values 4 Conversely, those against Islamic doctrines and that bring corruption to society (<i>mafsadāt</i>) must be rejected 5 In national life, religion should be utilized as inspiration and guidance; hence, there should be no conflicts between religious frames of thought and nationalist frames of thought	No	This sounds more like an admonition or recommendation than a <i>fatwā</i> because of the lack of normative points

(Continued)

<i>No.</i>	<i>Subject matters</i>	<i>Rulings</i>	<i>Promulgated as Fatwā</i>	<i>Comments by Alfitri</i>
4.c	The equating mindset in religious issues	(point 1–2 simply statements) 3 Difference of opinion is recognized in Islam, but it should not be understood as freedom with no boundary 4 Difference of opinion can be tolerated as long as it is still within <i>majāl al-ikhtilāf</i> (matters susceptible to a difference in Islam); beyond that is categorized as heretical 5 In dealing with <i>majāl al-ikhtilāf</i> , Muslims should find the meeting point at maximum efforts ... (point 6 simply a statement)	No	As mentioned above
4.d	Coordinating strategic steps in dealing with religious issues	1 Muslims need to streamline their movements 2 Effective movements ought to be rehabilitative, coordinated, synergized, mutually supportive, and productive 3 To achieve this, MUI is expected to coordinate, synchronize, and synergize Muslim movements	No	As mentioned above There is a point where MUI positions itself as the coordinator of Islamic organizations in Indonesia Process tracing of MUI's role in Indonesia reveals that it has actively performed as an initiator and coordinator of socio-economic, sociocultural, and sociopolitical programs for Muslims

(Continued)

No.	Subject matters	Rulings	Promulgated as Fatwā	Comments by Alfiri
5	Issues of Contemporary Events (<i>Mas'āl Waq'iyya Mu'ashina</i>):			
5.a	Short message service (SMS) prizes	1 SMS prizes are prohibited (<i>ḥarām</i>) because they contain elements of gambling (<i>mayṣir</i>), wasting money (<i>tabdīr</i>), deceitful (<i>gharar</i>), harmful (<i>ḍarar</i>), luring (<i>ighrā'</i>), <i>ishrāf</i> (redundant). There is an exception to SMS prizes, which provide prizes not from the participants 2 Prohibited SMS Prizes can be in the form of a contest, quiz, sport, games, competition, and so forth, which promise prizes drawn among SMS senders 3 Prizes of prohibited SMS are those coming from premium charges of SMS sent by participants in which the charges exceed beyond the regular rate of a text message 4 The prohibited status of SMS prizes generally applies to event organizers, telecommunication providers, participants, and other sponsors	Yes, No. 9 the Year 2008 concerning Short Message Service Prizes The same rulings as the 2006 decision with different redaction: point 3 is included in point 1; point 2 is taken out and changed to "SMS prizes which do not contain elements mentioned in point 1 are considered neutral/permissible (<i>mubāḥ</i>)"	No further meeting by the KF-MUI; the promulgation of the <i>fatwā</i> was signed on September 17, 2008 The <i>fatwā</i> also considers the Advisory and Supervisory Task Force's research findings for Free Lottery set up by the Indonesian Telecommunication Regulation Agency (BRTI). The research finds that SMS Prizes have adverse effects on society because they encourage people to send SMS as frequently as possible, while participants cannot detect the mechanism to draw winners and quantity of prizes. Hence, the BRTI has instructed telecommunication providers to stop SMS Prizes features in their services
5.b	Unregistered marriage (<i>nikah bawāh tangan</i>)	1 The participants of Ijtima Ulama agree that the government office must register a marriage in order to prevent adverse impacts that may arise from nonregistration (<i>sadd al-dharī'a</i>) 2 Yet, unregistered marriage (<i>nikah bawāh tangan</i>) is valid according to Islamic law (<i>fīqh</i>) because it fulfills the requirements of marriage in Islam; if there are harmful effects from such a marriage, then it is prohibited (<i>ḥarām</i>)	Yes, No. 10 the Year 2008 concerning unregistered marriage The same rulings with different redaction	No further meeting by the KF-MUI; the promulgation of <i>fatwā</i> was signed on September 17, 2008 The <i>fatwā</i> is a response to a proposal to criminalize perpetrators invoked by the draft bill of the substantive marriage law for the religious courts

(Continued)

<i>No.</i>	<i>Subject matters</i>	<i>Rulings</i>	<i>Promulgated as Fatwā</i>	<i>Comments by Alfārī</i>
5.c	Financing national development with foreign loans	It is permissible if the internal funding sources are insufficient, and with the following conditions: - a The foreign loan is utilized to achieve self-financing capacities later and to sustain national development - b The foreign loan is utilized effectively and efficiently for the interest of people at large. Hence, it is prohibited to embezzle it - c The foreign loan is acquired through the financial scheme free from interest - d If not possible, a conventional financial scheme is allowed on the ground of necessity (<i>darūra</i>) - e The foreign loan does not contain inequitable terms and conditions - f The government must seek alternative sources beyond debt such as direct investment, issuing <i>sharī'a</i> bonds, voluntary sector funds (zakat, <i>waqf</i>, and grant), and other sources which do not contradict the <i>sharī'a</i>	No	

(Continued)

No.	Subject matters	Rulings	Promulgated as <i>Fatwā</i>	Comments by <i>Alfiri</i>
5.d	Managing natural resources	1 (Simply statement) 2 Natural resources, especially those affecting the lives of people at large. The decision mentioned the categories of natural resources cited in classical <i>fiqh</i>: water, fire, grassland, forest, and minerals. The state must manage these, and their benefits must be returned to the people in the form of essential need services 3 Sustainable development must be adopted in exploring and exploiting natural resources 4 The use of environmental-friendly technology to achieve eco-efficiency 5 Law enforcement is necessary to avoid environmental damage and pollution	No	It is a new institute established by MUI for the improvement of natural resources This sounds more like an admonition or recommendation than a <i>fatwā</i> because it lacks a normative point
5.e	Transferring embryo to a surrogate womb	1 It is prohibited (<i>harām</i>) if the transfer happens from an embryo generated from a husband's sperm and his wife's ovum to a surrogate womb 2 Idem, if it happens from the embryo generated from the husband's sperm and his wife's ovum to his other wife's surrogate womb 3 Idem point 1, if the reason is the husband and wife do not want the pregnancy 4 The legal status of a child born from points 1–3 is “child born outside wedlock”; thus, the child has a legal relationship with his/her mother	No	

(Continued)

No.	Subject matters	Rulings	Promulgated as <i>Fatwā</i>	Comments by <i>Alfiri</i>
5.f	Alternative medicine	Alternative medicines are medical treatments sought from other than medical practitioners (doctors or nurses) It is prohibited if alternative medicine practices contain <i>shirk</i> (association of God with other entities) and <i>sihr</i> (black magic). If free from both elements, it is permissible. Medical treatment with prohibited things is non- <i>halāl</i> 1 Stunning the animals before slaughtering them is permissible (<i>mubāḥ</i>) on the grounds of easing the process, especially on a big scale farm; yet, MUI recommends the use of this method as a last resort 2 The use of human flesh for drugs and cosmetics is prohibited (<i>ḥarām</i>); likewise, the use of human hair for food products 3 The use of microbes originating from a baby's stool, after several times of culturing process, is permissible for food processing 4 The use of alcohol and ethanol is referred to under an existing MUI <i>fatwā</i>	No <	

(Continued)

No.	Subject matters	Rulings	Promulgated as <i>Fatwā</i>	Comments by <i>Alfiri</i>
6	Issues on legislation (<i>Masail Qanuniyah</i>)	Recommendation on drafting bills, for example, in the bill of zakat law amendment: 1 Change the title from zakat administration law to zakat law 2 BAZNAS as the coordinator of existing zakat agencies 3 Sanction for infringement not only imposed on zakat agencies and zakat evaders but also upon the beneficiaries 4 Zakat should also become a tax credit 5 Amendment to zakat law should be followed	N/A	MUI always issues recommendations concerning zakat (administration) law in each of its national events: national meeting, national workshop, and Ijtima Ulama, either before the issuance of regulations related to the institution zakat agencies (BAZIS), zakat law No. 38/1999 and after their issuance The recommendations revolve around the issue: channeling zakat payments to zakat agencies instead of direct payments to beneficiaries; the state acting as the zakat collector; the obligation of zakat should be enforced with sanctions for the evaders; tax treatment for zakat payers
7	Issues of Nationalism (<i>Masā'il Aṣṣīyya Wātāniyya</i>)	Fourth <i>Ijtima Ulama</i> , 2009, Padang Panjang, West Sumatera		
7.a	Inter-religious relationship among people	Idem 4.a.	No	It is more like admonition than <i>fatwā</i> because it lacks normative points
7.b	The role of religion in developing moral character	N/A	No	It is more like admonition than <i>fatwā</i> because it lacks normative points
7.c	Implementation of Islam as a mercy for the world	N/A	No	It is more like admonition than <i>fatwā</i> because it lacks normative points

(Continued)

No.	Subject matters	Rulings	Promulgated as <i>Fatwā</i>	Comments by <i>Alfiri</i>
7.d	Voting rights in the general election	1 Simply a statement 2 Electing a leader in Islam is an obligation 3 Simply a statement 4 It is an obligation to elect a leader whose character is as follows: a man of faith, honest, trustworthy, active and attentive, capable, and fights for the interests of the Islamic community 5 To elect a leader who does not have the characters above or not give one's vote while there is a candidate with the above characteristics is prohibited (<i>harām</i>)	No	Similar to every other election after the fall of the authoritarian New Order regime, MUI always issues an admonition encouraging Muslims to vote for candidates who will care about Muslims' interests in Indonesia
8	Issues of Contemporary <i>Fiqh</i> (Commission B-1) 8.a Problems related to <i>waqf</i> (Islamic trust)	1 Changing the object of <i>waqf</i> is permissible on the grounds of realizing public benefits 2 Changing cash <i>waqf</i> (<i>wakaf uang</i>) to commodity <i>waqf</i>, and vice versa, is permissible because of public benefit and necessity 3 The object of <i>waqf</i> can be sold on the grounds of need, and the proceeds of such sale must be used to buy other commodities that substitute the <i>waqf</i> 4 The implementation of points 1–4 can only be done after the permission of the Ministry of Religious Affairs and MUI's advice 5 Trustees must understand their duty and responsibility, including understanding investment	No	A <i>fatwā</i> (without numbering) concerning the permissibility of cash <i>waqf</i> was issued earlier by the KF-MUI on May 11, 2002

(Continued)

No.	Subject matters	Rulings	Promulgated as <i>Fatwā</i>	Comments by <i>Alfiri</i>
8.b	Problems related to zakat (<i>ʿāmil</i> , expenses incurred from zakat management, and Corporate Zakat)	1 <i>ʿĀmil</i> (an individual or a zakat agency appointed by or authorized by the government) is entitled to a maximum of 12.5% of zakat proceeds given its status as one of eight beneficiaries 2 <i>ʿĀmil</i> is not allowed to ask for commission beyond the amount above and to receive any gift from zakat payers 3 <i>ʿĀmil</i> is not allowed to give any gift bought or made with zakat proceeds to zakat payers 4 <i>ʿĀmil</i> is not allowed to receive any gift from zakat payers concerning its duty as zakat collectors 5 Direct or indirect expenses incurred from zakat distribution must be paid with the <i>ʿāmil</i>'s share of the zakat proceeds; if insufficient, it can be paid from other charity funds beyond zakat proceeds 6 Corporations or companies that fulfill the terms and conditions of zakat payers are obliged to pay zakat in their capacity as legal entities (<i>shakhṣiyya ʿtibārīyya</i>) and representatives (<i>wakil</i>) of the shareholders	No	As far as the problems related to <i>ʿĀmil</i> is concerned, however, the KF-MUI issued a <i>fatwā</i> No. 8 the Year 2011 concerning <i>Amil Zakat</i> (Zakat Agency) The <i>fatwā</i> does not make any reference to the decision of 2009 Ijtima Ulama concerning zakat problems. However, the rulings are the same as the 2009 decision with different redaction. They are: – The government provides operational costs of an <i>ʿāmil</i> – In case of absence or lack of government funding, the operational costs may be taken from an <i>ʿāmil</i> share of zakat proceeds [yet, the <i>fatwā</i> does not mention 12.5% share] – an <i>ʿāmil</i> who receives a salary from the government or private NPO is not entitled to their share of zakat proceeds

(Continued)

<i>No.</i>	<i>Subject matters</i>	<i>Rulings</i>	<i>Promulgated as Fatwā</i>	<i>Comments by Alfitri</i>
8.c.	The legal status of smoking	1 The participants agree that there is a difference of opinion regarding the legal status of smoking: between disapproved (<i>makrūh</i>) and prohibited (<i>ḥarām</i>) 2 The participant agrees that smoking prohibited if it is done in public spaces, by children, by pregnant women	No	
9	Issues of Contemporary <i>Fiqh</i> (Commission B-2)	Vasectomy is prohibited because the recanalization cannot guarantee that the person's fertility will return to normal	No	This decision further confirms the previous <i>fatwā</i> on vasectomy. The background of the decision was recent developments in vasectomy recanalization
9.a	Vasectomy		No	This decision's background is a <i>fatwā</i> on the prohibition of Yoga issued by the <i>fatwā</i> committee of Kelantan, Malaysia
9.b	Yoga	1 The practice of Yoga as a pure manifestation of other religious ritual and spirituality is prohibited for Muslims 2 The proof from the perspective of <i>fiqh</i> for that is <i>sadd al-dharʿa</i> (blocking the means), i.e., blocking the means towards polytheism or (<i>shirk</i>) 3 The practice of Yoga, merely a form of respiratory exercise, is permissible (<i>mubāḥ</i>)	No	

(Continued)

No.	Subject matters	Rulings	Promulgated as <i>Fatwā</i>	Comments by <i>Alfiri</i>
9,c	Eye Bank and other Human Flesh	1	Cornea transplantation is permissible on the ground of necessity	The FC-MUI has issued a <i>fatwā</i> on the permissibility to donate one's cornea based on the donor's choice
		2	Organ transplantation is permissible based on the donors' free choice	
		3	Donating one's cornea or organs during his/her life is prohibited	
		4	Point 2 is done voluntarily, not commercially	
		5	Eye banks are permissible if the process (taking it from the donor and transplanting it to the beneficiary) accords with <i>shar'ā</i>	
9,d	Marriage of minors	1	Basically, Islam does not give a minimum age of marriage definitively; eligibility of marriage is marked by the age where one is capable of a sexual act and to receive the attending rights	This decision's background was the marriage of a 12-year-old girl to a businessman in central Java
		2	Marriage of minors thus is valid as long as it fulfills terms and conditions of marriage, but it is prohibited if it inflicts harm upon the minor	
		3	To realize the benefit of marriage, the minimum age of marriage is based on the standardized age outlined by the Marriage Law (19 years for men and 16 years for women)	

(Continued)

<i>No.</i>	<i>Subject matters</i>	<i>Rulings</i>	<i>Promulgated as Fatwā</i>	<i>Comments by Alfitri</i>
9.e	Consuming <i>ḥalāl</i> food	1 <i>Ḥalāl</i> food security is Muslims' right 2 Food products, medicines, and cosmetics which cannot be verified as <i>ḥalāl</i> must be avoided until their status are clear 3 To guarantee that consumer products used by Muslims are <i>ḥalāl</i>, producers are called to certify their products immediately 4 <i>ḥalāl</i> certification must be carried out by the authoritative bodies, viz., Lembaga Pengkajian Pangan, Obat-Obatan, dan Kosmetika Majelis Ulama Indonesia (LP POM MUI); producers who gained the <i>ḥalāl</i> certificate have to maintain the <i>ḥalāl</i> status by implementing the <i>Ḥalāl</i> Warranty System of LP POM MUI; 5 The government must supervise the <i>ḥalāl</i> status of consumer products	No	The KF-MUI has issued several <i>fatāwā</i> related to food and its processing and whether this complies with <i>sharʿa</i>, as well as chemical ingredients used in food, medicines, and cosmetics This decision is more concerned with making the LP-POM MUI the authority in <i>ḥalāl</i> food auditing and certification

Note

1 The year 2012 is used as the limit because the compilation of MUI *fatāwā* from 1975 to recent years was first published in 2011 by the secretariat of MUI, see Majelis Ulama Indonesia. *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975*. Jakarta: Sekretariat MUI – Penerbit Erlangga, 2011.

**ANNEX II: CORPORATE
ZAKAT PAYMENT IN DOMPET
DHUAFA 2000–2010**

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
1	03DDZ	KARYAWAN REPUBLIKA	v	x	x	x	x	x	x	x	x	x	x	Zakat paid by employees
2	03FUM	BAZIS TUGU MANDIRI	v	x	x	x	x	x	x	x	x	x	x	Receiving zakat from a zakat agency
3	03KYD	PT. MITSUI MARINE	v	x	x	x	x	x	x	x	x	x	x	ID conflict: 03RLV PT. Anugerah Sejati?
4	03KYL	PT. ANUGRAH SEJATI	v	v	v	x	v	v	x	x	x	x	x	
5	03KYP	PT. ADHIREKSA INTICOR	v	x	v	x	x	x	x	x	x	x	x	ID conflict: 03KXX PT grid Rekasa Satmata?
6	03KZH	PT. DWISATU MUSTIKA BUMI (DMB)	v	x	v	x	x	x	x	x	x	x	x	
7	03KZQ	PT. GLOBAL MITRA	v	x	x	x	x	x	x	x	x	x	x	Zakat paid by Muslim employees
8	03KZT	PT. GRID RIKA SASMATA	v	v	v	x	x	x	x	x	x	x	x	
9	03LBH	PT. UFAR	v	x	x	x	x	v	x	x	x	x	v	Zakat paid by a Muslim congregation
10	03LBX	PT. VISI BERSAMA SERANTAU	v	x	x	x	x	x	x	x	x	x	x	
11	03BOJ	IKATAN MUSLIM ABN AMRO	x	v	x	x	x	x	x	x	x	x	x	Zakat paid by a Muslim congregation
12	03CQQ	JAMAAH MTXL	x	v	x	x	x	x	x	x	x	x	x	
13	03CZE	KOPEGTEL RAJAWALI	x	v	x	x	x	x	x	x	x	x	x	Zakat collected in the mosque
14	03EMS	PT. GLOMEBI SETIA (AC GLOBAL)	x	v	v	v	v	v	v	v	v	v	v	
15	03FQJ	BAAROQA FILM (HARYO A. SOENHARJO)	x	v	v	v	v	v	x	x	x	x	x	Zakat collected in the mosque
16	03GHO	CV. ORISOL INDONESIA	x	v	x	x	x	x	x	x	x	x	x	
17	03IML	MUSHOLLA AL-MUHAIJIRIN (GRAHA UNILEVER)	x	v	x	x	x	x	x	x	x	x	x	Zakat collected in the mosque
18	03JBG	MASJID NURUL HAQ	x	v	x	x	x	x	x	x	x	x	x	

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
19	03KXU	PT. ERASAKA MITRA/PRATA MANDIRI	x	v	v	v	v	v	v	v	v	x	x	
20	03LAZ	PT. SUCOFINDO	x	v	x	x	x	x	x	x	x	x	x	
21	03LBE	PT. TREND INTERNUSA BUANA	x	v	x	x	x	x	x	x	x	x	x	
22	03LBM	PT. BITAMA KRIDA INDONESIA	x	v	x	v	x	x	x	x	x	x	x	
23	03PKQ	UD. SRIWEDARI	x	v	x	x	x	x	x	x	x	x	x	
24	03QAF	YAYASAN PURNA NINDYA SEJAHTERA	x	v	x	x	x	x	x	x	x	x	x	
25	03DEL	KANAKA PURADIREJA AND REKAN	x	x	v	v	v	v	v	x	x	x	x	
26	03DEP	KARY. MUSLIM PT ASTRA	x	x	v	x	x	x	x	x	x	x	x	Zakat paid by Muslim employees
27	03DER	PT. ASURANSI ASTRA BUANA	x	x	v	v	v	x	v	v	v	v	v	
28	03GHM	CV. MULIA ELEKTRIKA	x	x	v	x	x	x	x	x	x	x	x	
29	03IVB	MAJLIS TAKLIM PENG MUSLIMAH LAND MARK	x	x	v	x	x	x	x	x	x	x	x	Zakat paid by a Muslim congregation
30	03IVF	MAJLIS TAKLIM NURUL HIKMAH	x	x	v	x	x	x	x	x	x	x	x	Zakat paid by a Muslim congregation
31	03KXX	PT. GRID REKSA SATMATA	x	x	v	x	v	x	x	x	x	x	x	ID conflict: 03KZT PT grid Rika Sasmata?
32	03KYM	PT. RIZQITA PRIMA BUSANA	x	x	v	x	x	x	x	x	x	x	x	
33	03KYN	PT. ADHI KARYA	x	x	v	x	x	x	x	x	x	x	x	
34	03LAM	PT. MULTI EKA KARMA	x	x	v	x	v	v	x	v	v	x	x	
35	03PAR	PT. TOKO BUKU WALISONGO	x	x	v	x	v	x	x	x	x	x	x	
36	04GP	PT. ICTINDO MITRA SOLUSI	x	x	v	x	x	x	x	v	v	v	v	ID conflict: 2007 PT. Sumber Daya Komtelindo

(Continued)

<i>No</i>	<i>ID</i>	<i>Name of companies</i>	<i>00</i>	<i>01</i>	<i>02</i>	<i>03</i>	<i>04</i>	<i>05</i>	<i>06</i>	<i>07</i>	<i>08</i>	<i>09</i>	<i>10</i>	<i>Note</i>
37	03CPV	JAMAAH MAJELIS TAKLIM IMTAQ BPPN	x	x	x	v	x	x	x	x	x	x	x	Zakat paid by a Muslim congregation
38	03CPZ	JAMAAH MASJID AL IMAN	x	x	x	v	x	x	x	x	x	x	x	Zakat paid by a Muslim congregation
39	03FLO	ALUMNI SMP PERGURUAN CIKINI	x	x	x	v	x	x	x	x	x	x	x	Zakat paid by members of an association
40	03FST	BANK SYARIAH WAKALUMI	x	x	x	v	x	x	x	x	x	x	x	
41	03FUP	BDI CHEVRON GEOTHERMAL INDONESIA	x	x	x	v	x	x	x	x	v	v	v	
42	03FUR	KARYAWAN KONDUR PETROLEUM	x	x	x	v	x	v	x	x	x	x	x	Zakat paid by Muslim employees
43	03HJH	DARA (PT. JARING LINTAS USAHA)	x	x	x	v	v	v	x	x	x	x	x	
44	03IMI	MUSHOLLAH NURUL ROZAK	x	x	x	v	x	x	x	x	x	x	x	Zakat collected in the mosque
45	03IUT	MAJELIS TA'LIM QURROTUL 'AIN	x	x	x	v	v	x	x	x	x	x	v	Zakat paid by a Muslim congregation
46	03IBH	MASJID NURUL IMAN DEPARTEMEN PERTANIAN	x	x	x	v	x	x	x	x	x	x	x	Zakat collected in the mosque
47	03KXF	PT. AHAD NET INTERNASIONAL	x	x	x	v	x	x	x	x	x	x	x	
48	03KXM	PT. CARGO LINTAS SAMUDRA	x	x	x	v	x	x	x	x	x	x	x	
49	03KXO	PT. CIRCLEOM NUSANTARA INDONESIA	x	x	x	v	x	x	x	x	x	x	x	
50	03KZM	PT. FORTUNE INDONESIA	x	x	x	v	x	x	x	x	x	x	x	
51	03LBQ	PT. GHITA INDOTRANS SENTOSA	x	x	x	v	x	x	x	x	v	x	v	ID conflict: PT. senator?
52	03MGU	RM. AYAM BAKAR WONG SOLO	x	x	x	v	x	x	v	x	x	x	x	

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
53	03QTG	PT. FARABI KITA MUSIKA	x	x	x	v	x	x	x	x	x	x	x	
54	03QTN	KARYAWAN ERICSON INDONESIA	x	x	x	v	x	x	x	x	x	x	x	Zakat paid by Muslim employees
55	03QUB	KOPERASI KOPDA KARYA	x	x	x	v	x	x	x	x	x	x	x	
56	03QYS	CV. PANCA KARYA PRATAMA	x	x	x	v	v	x	x	x	x	x	x	
57	03RFM	ALUMNI TEKNO EKONOMI ITB ANG. 99	x	x	x	v	x	x	x	x	x	x	x	Zakat paid by members of an association
58	03RLS	PT. BSS	x	x	x	v	x	x	x	x	x	x	x	
59	03RLV	PT. ANUGERAH SEJATI	x	x	x	v	v	v	v	x	x	x	x	ID conflict: 03KYVL PT. Anugrah Sejati?
60	03ROZ	MAJELIS TA'LIM TRANS TV	x	x	x	v	x	x	x	x	x	x	x	Zakat paid by a Muslim congregation
61	03RZR	PT. INFINITI MEDIA PROMOSINDO	x	x	x	v	x	x	x	x	x	x	x	
62	03CZC	PT. CITRA DUTA MITRA PELITA/KOMSENI	x	x	x	x	v	x	x	x	x	x	x	
63	03MKM	RUDI ANTORO	x	x	x	x	v	x	x	x	x	x	x	Individual?
64	03RLI	PENGGAJIAN CHAIRUNNISA	x	x	x	x	v	x	x	x	x	x	x	Zakat paid by a Muslim congregation
65	04AAH	CV. SANGKIL	x	x	x	x	v	v	x	x	x	x	x	
66	04ACD	PT. ENER GASINDO HEKSA KARYA	x	x	x	x	v	x	x	x	x	v	v	
67	04AJK	PT. ARKA DE ADHI KREASI	x	x	x	x	v	x	x	x	v	x	v	
68	04AQO	ARIFIN LAMBAGA	x	x	x	x	v	v	v	v	x	v	x	ID conflict: 2009 04AQO PT. Mutuagung Lestari?
69	04BBL	PT. INDOSUCI BARAKA PERDANA	x	x	x	x	v	x	x	x	x	x	x	

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
70	04BFX	PT. SARI ASIH (MARSUDI AND SITI ROHAYAH)	x	x	x	x	v	v	x	v	x	v	v	
71	04BGT	PT. TULADA KONSULA	x	x	x	x	v	x	x	x	v	x	v	
72	04BMB	PT. CIPTA TANTRAMA	x	x	x	x	v	x	x	x	v	x	x	
73	04BRU	AL FIRA JATIWARINGIN	x	x	x	x	v	x	x	x	x	x	x	
74	04EZ	PT. MAENA EXPRESS	x	x	x	x	v	x	x	x	x	x	x	
75	04FA	PT. INTERMODA TRANS	x	x	x	x	v	x	v	x	x	x	x	ID conflict: 05ASY
76	04KU	PT. PRIMA SARANA EKSPRESS	x	x	x	x	v	x	x	x	x	x	x	PT. Prima Sarana Express?
77	04QL	PT. PACIFIC TIMUR ENERGINDO	x	x	x	x	v	x	x	x	x	x	x	
78	04TU	PT. NUSANTARA CARD SEMESTA (NCS)	x	x	x	x	v	v	v	v	v	v	v	
79	04ADM	PT. INDONESIA POWER	x	x	x	x	x	v	x	x	x	x	x	
80	04CGG	TIP TOP CAB RAWAMANGUN	x	x	x	x	x	v	x	x	x	x	x	
81	04CGH	PELANGGAN TIP TOP CABANG PONDOK BAMBUI	x	x	x	x	x	v	x	x	x	x	x	Zakat paid by customers
82	04CGI	PELANGGAN TIP TOP CABANG DEPOK	x	x	x	x	x	v	x	x	x	x	x	Zakat paid by customers
83	05ALV	BIRO PSIKOLOGI PERSONA	x	x	x	x	x	v	x	x	x	x	x	
84	05AOX	PT. TRANSFERA	x	x	x	x	x	v	x	x	x	x	x	
85	05APJ	PELANGGAN TIP TOP CABANG CIPUTAT	x	x	x	x	x	v	x	x	x	x	x	Zakat paid by customers
86	05ASY	PT. PRIMA SARANA EXPRESS	x	x	x	x	x	v	x	x	x	x	x	ID conflict: 04KU PT. Prima Sarana Ekspress?
87	05AUS	KARYAWAN CMS TRAVEL SERVICES	x	x	x	x	x	v	x	x	x	x	x	Zakat paid by Muslim employees
88	05AJY	RESTO MINANG TARAZZO'S	x	x	x	x	x	v	x	x	x	x	x	

(Continued)

No ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
89 05BEC	IBU-IBU TK AL AZHAR BINTARO	x	x	x	x	x	v	x	x	x	x	x	Zakat paid by a Muslim congregation
90 05BPI	PELANGGAN TIP TOP CAB CIMONE	x	x	x	x	x	v	x	x	x	x	x	Zakat paid by customers
91 05BYI	PT. HANDARU ADHIPUTRA	x	x	x	x	x	v	x	x	x	x	v	
92 05CBX	PT. ARIBIMO WIBAWA SAKTI	x	x	x	x	x	v	x	v	x	x	x	
93 05CFG	PT. INTRA ASIA/WQA	x	x	x	x	x	v	x	v	x	x	x	
94 05CGQ	BMT NUR ARBAIN	x	x	x	x	x	v	x	x	x	x	x	
95 05CGR	MUSHOLLA DARUL MUTA'ALIMIN	x	x	x	x	x	v	x	x	x	x	x	Zakat collected in the mosque
96 05CLB	PT. WAHANA MITRA UTAMA	x	x	x	x	x	v	v	x	x	x	x	
97 05CLD	PT. EMDECA	x	x	x	x	x	v	x	x	x	x	x	
98 05GG	PT. EURO MANAGEMENT INDONESIA	x	x	x	x	x	v	x	x	x	x	x	
99 03LBK	PT. WISMA KOSGORO	x	x	x	x	x	x	v	v	v	v	v	
100 05CVE	AIR MINUM ISI ULANG "AQUARIUS"	x	x	x	x	x	v	v	x	x	x	x	
101 06ACK	PT. ASURANSI ADIRA DINAMIKA	x	x	x	x	x	x	v	v	v	v	x	
102 06AEL	PT. DELPRINDO	x	x	x	x	x	x	v	x	x	x	x	
103 06AJA	PT. SAPTA ROMLI PROPERTINDO	x	x	x	x	x	x	v	x	v	x	x	
104 06CUS	PT. HESMINKO NUSANTARA	x	x	x	x	x	x	v	x	x	x	x	ID conflict: 06ERP Hesminko?
105 06CZI	PT. RANU SHAKTI EXPORTS INDONESIA	x	x	x	x	x	x	v	x	x	x	x	
106 06DJT	PT. PERSADA KAPITAL	x	x	x	x	x	x	v	x	x	x	x	
107 06EGZ	PT. PESONA TAMAN AER HOTEL	x	x	x	x	x	x	v	x	v	x	x	
108 06ERN	HESKO	x	x	x	x	x	x	v	x	x	x	x	ID conflict: 06IPR PT. Hesco

(Continued)

<i>No</i>	<i>ID</i>	<i>Name of companies</i>	<i>00</i>	<i>01</i>	<i>02</i>	<i>03</i>	<i>04</i>	<i>05</i>	<i>06</i>	<i>07</i>	<i>08</i>	<i>09</i>	<i>10</i>	<i>Note</i>
109	06ERP	HESMINCO	x	x	x	x	x	x	v	x	x	x	x	ID conflict: 06CUS PT. Hesminko Nusantara?
110	06EVD	PT. NATURA BINA MITRA	x	x	x	x	x	x	v	x	x	x	x	
111	06FAY	PT. LUMA KREASI IMAJI	x	x	x	x	x	x	v	x	x	x	x	
112	06FKE	PT. EXPLORINDO TOTAL SOLUSI	x	x	x	x	x	x	v	x	v	x	x	
113	06GOP	PT. SARANA MUKTI SEJAHTERA	x	x	x	x	x	x	v	x	x	v	v	
114	06IPR	PT. HESCO	x	x	x	x	x	x	v	v	x	x	x	ID conflict: 06ERN Hesko?
115	06LM	PT. MINARET APTELIER	x	x	x	x	x	x	v	x	v	x	x	
116	06XP	PT. ZONA TRANS LOGISTIK	x	x	x	x	x	x	v	v	v	x	x	
117	06YG	PT. GRANIK A NUSA SELARAS	x	x	x	x	x	x	v	x	x	x	x	
118	07YLC	PT. SENTRA GRAFIKA KOMPUMEDIA	x	x	x	x	x	x	v	x	x	x	x	
119	05APW	YAYASAN MITRA TEKNOLOGI INDONESIA	x	x	x	x	x	x	x	v	x	x	x	
120	06CAT	PT. KONDUR PETROLEUM AND GROUP	x	x	x	x	x	x	x	v	x	x	x	
121	07AAMG	KOPERASI KARYAWAN TAKAFUL	x	x	x	x	x	x	x	v	v	v	v	
122	07DD	PT. IGAS UTAMA	x	x	x	x	x	x	x	v	x	x	x	
123	07DE	RSB PRIMA MEDIKA	x	x	x	x	x	x	x	v	v	x	x	
124	07EHB	BINROH PT. TPJ SSST	x	x	x	x	x	x	x	v	v	x	x	ID conflict: Binroh? TPJ SSST?
125	07EHO	LAZ ANNUR	x	x	x	x	x	x	x	v	x	x	x	Receiving zakat from a zakat agency
126	07FVO	PT. PESONA DENUANG RITEL	x	x	x	x	x	x	x	v	x	x	v	08WG PT Pesona Dennuang Ritel?

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
127	07GGR	PT. DELTA MUTIARA MAHAKAM	x	x	x	x	x	x	x	v	x	v	v	
128	07GMM	ALUMNI SD-SMP-SMA CIKINI	x	x	x	x	x	x	x	v	x	x	x	Zakat paid by members of an association
129	07GUI	PT. CUPU INTAN ADYA PERMATA	x	x	x	x	x	x	x	v	x	x	x	
130	07HQW	PT. HUMANIKA	x	x	x	x	x	x	x	v	x	x	x	
131	07HZU	KARYAWAN PT. ARTHA INDOKIMIA RAYA	x	x	x	x	x	x	x	v	x	v	v	Zakat paid by Muslim employees
132	07IGS	PT. DEMI GISELA CITRA UTAMA	x	x	x	x	x	x	x	v	x	x	x	
133	07ITJ	PT. MITRA COMPUTA ASIA	x	x	x	x	x	x	x	v	x	v	x	
134	07IWI	PT. BESTARI BUANA MURNI	x	x	x	x	x	x	x	v	x	x	x	2009 09ADTI PT. Bestari Buana?
135	07IBI	PT. LAUTAN ANUGRAH KHALIK	x	x	x	x	x	x	x	v	x	x	x	
136	07JNP	PT. UNGGUL DAWENANG SENTOSA	x	x	x	x	x	x	x	v	x	x	x	
137	07KAA	PT. UNGGARAN PERKASA TEHNIK	x	x	x	x	x	x	x	v	v	x	x	
138	07MEQ	PT. SINERGI PANCA KREASI	x	x	x	x	x	x	x	v	x	v	x	2009 07HLU PT. Sinergi Panca Kreasi?
139	03GHL	CV. ANUGRAH RAYA	x	x	x	x	x	x	x	v	v	v	v	
140	03KYH	PT. REKAYASA INDUSTRI	x	x	x	x	x	x	x	v	v	v	v	
141	03NTB	PT. REPUBLIKA	x	x	x	x	x	x	x	v	x	x	v	
142	04GP	PT. SUMBER DAYA KOMTELINDO	x	x	v	x	x	x	x	v	v	v	v	ID conflict: 04GP PT. Ictindo Mitra Solusi?

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
143	05DJ	MEDCO INTI DINA	x	x	x	x	x	x	x	v	x	v	x	ID conflict: 2008 PT. Medco Intidnamika? Zakat paid by Muslim employees
144	07AAKZ	KARYAWAN PT. SATATA NEKATAMA	x	x	x	x	x	x	x	v	v	v	v	
145	07AALB	PT. PRIMA CAHAYA MANDIRI	x	x	x	x	x	x	x	v	x	x	x	
146	07MNX	PT. SENTRA TEKNIKA PRIMA	x	x	x	x	x	x	x	v	x	x	x	
147	08AA	PT. DAYA CITRA	x	x	x	x	x	x	x	v	x	x	x	
148	08CWD	CALTEX PACIFIC IND	x	x	x	x	x	x	x	v	v	x	x	
149	08DLQ	PT. MITRA GUNA	x	x	x	x	x	x	x	v	v	v	v	ID conflict: 2008 PT Mitra Guna Adikarya?
150	08LP	TRIM SYARIAH BERIM TRF	x	x	x	x	x	x	x	v	x	x	x	
151		PT. PRIMA C M	x	x	x	x	x	x	x	v	x	x	x	ID?
152		PT. LETTERIX MAJU BERSAMA	x	x	x	x	x	x	x	v	v	x	x	ID?
153		KBRI YANGOON MYANMAR	x	x	x	x	x	x	x	v	x	x	x	ID?
154		PT. GEOSINDO BOGOR	x	x	x	x	x	x	x	v	x	x	x	ID?
155		PT. MI	x	x	x	x	x	x	x	v	x	x	x	ID?
156		PT. VISION03	x	x	x	x	x	x	x	v	x	x	x	ID?
157	03CQI	JAMAAH MASJID BAITURRAHMAN	x	x	x	x	x	x	x	x	v	x	x	Zakat paid by a Muslim congregation
158	03DDV	KARY/1 PT. NCS	x	x	x	x	x	x	x	x	v	v	x	Zakat paid by Muslim employees
159	03EQB	A. MOEHAMMAD AND ASSOCIATES	x	x	x	x	x	x	x	x	v	x	x	
160	07JIQ	CUSTOMER TREND SHOP BEKASI	x	x	x	x	x	x	x	x	v	v	v	Zakat paid by customers
161	08AAP	PT. INFIGO KOMUNIKA UTAMA	x	x	x	x	x	x	x	x	v	v	x	
162	08AEJ	PT. CITRA CATRA PERSADA	x	x	x	x	x	x	x	x	v	x	x	

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
163	08ALF	KARYAWAN/TI PT. AETRA	x	x	x	x	x	x	x	x	x	x	x	Zakat paid by Muslim employees
164	08CLL	FITNESS EARTH LIVING	x	x	x	x	x	x	x	x	x	x	x	
165	08CLM	SPA EARTH LIVING	x	x	x	x	x	x	x	x	x	x	x	
166	08EJY	PT. PATRA DINAMIKA	x	x	x	x	x	x	x	x	x	x	x	
167	08EOR	PT. DELTA SINDO DWIDAYA	x	x	x	x	x	x	x	x	x	x	x	
168	08EXP	PT. CHEMTRADE INDONESIA	x	x	x	x	x	x	x	x	x	x	x	
169	08FGL	PT. CICERO INDONESIA	x	x	x	x	x	x	x	x	x	x	x	
170	08FIN	PT. PRAVIGA LINDRA MATA BUMI	x	x	x	x	x	x	x	x	x	x	x	
171	08FNP	PT. MALOKA MITRA ABADI	x	x	x	x	x	x	x	x	x	x	x	
172	08FOR	PT. ILHAM TREDIA INDUSTRI	x	x	x	x	x	x	x	x	x	x	x	
173	08GFK	PT. ALAM JAYA USAHA	x	x	x	x	x	x	x	x	x	x	x	
174	08GQU	CARREFOUR ITC DEPOK	x	x	x	x	x	x	x	x	x	x	x	
175	08IWM	HARIAN EKONOMI NERACA	x	x	x	x	x	x	x	x	x	x	x	
176	08IZ	PT. WASTU GATRA ARTISTIKA	x	x	x	x	x	x	x	x	x	x	x	
177	08JMI	KARYAWAN PT. PGN DIVISI AKUNTASI	x	x	x	x	x	x	x	x	x	x	x	Zakat paid by Muslim employees
178	08JW	PT. THAMES PAM JAYA/PT. AETRA	x	x	x	x	x	x	x	x	x	x	x	
179	08LG	PT. CITRA BUSANA INDONESIA (RANTI)	x	x	x	x	x	x	x	x	x	x	x	
180	08TZ	PT. PRIMA CITRA KARSA	x	x	x	x	x	x	x	x	x	x	x	
181		PT. NIROMUKTI KENCANA TEKNIKA	x	x	x	x	x	x	x	x	x	x	x	ID?
182		PT. RADIO PESONA INDAH FM BR KEBUMEN DARAT	x	x	x	x	x	x	x	x	x	x	x	ID?
183		PT. ANDALAN FLUID SISTEM	x	x	x	x	x	x	x	x	x	x	x	ID?
184		PT. SARASWATI INDRA TRIANA PURNA	x	x	x	x	x	x	x	x	x	x	x	ID?

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
185		PT. SPRING SURYA	x	x	x	x	x	x	x	x	v	x	x	ID?
186		NURPATRIA NU BSMI	x	x	x	x	x	x	x	x	v	x	x	ID? Bank Syariah Mandiri Indonesia?
187		PT. MULTI LINTAS EXP	x	x	x	x	x	x	x	x	v	x	x	ID?
188		UNLIMITED CIPTA SI	x	x	x	x	x	x	x	x	v	x	x	ID?
189	08LG	PT. CBI	x	x	x	x	x	x	x	x	v	v	x	ID conflict: CBI?
190		CV. MEUTIA CIPTA SARANA	x	x	x	x	x	x	x	x	v	x	v	ID?
191	03F	PT. GROWIT SEJAHTERA	x	x	x	x	x	x	x	x	v	x	x	ID = 03F?
192	03KXZ	PT. IRAKO ENGINEERING	x	x	x	x	x	x	x	x	v	v	v	
193		PT. TANKINDO PERDANA	x	x	x	x	x	x	x	x	v	x	v	ID?
194		TRIBUWANA CAHYA ANANTA	x	x	x	x	x	x	x	x	v	x	v	ID?
195	04BIF	PT. PHIBETA KALAM WIJAYA	x	x	x	x	x	x	x	x	v	v	x	
196	04BVH	PT. GERBANG MULTINDO	x	x	x	x	x	x	x	x	v	x	x	
197	05BCD	HAYGROUP	x	x	x	x	x	x	x	x	v	v	x	
198		PT. FORMITRA MULTI PRAKARSA	x	x	x	x	x	x	x	x	v	x	v	ID?
199		PT. PARAMATA BARAYA INTL	x	x	x	x	x	x	x	x	v	x	x	ID?
200		PT. MEDCO INTIDINAMIKA	x	x	x	x	x	x	x	v	v	v	v	ID conflict: ID = 05DJ PT. Medco Inti?
201	06MT	CUSTOMER TREND SHOP HASANUDIN	x	x	x	x	x	x	x	x	v	x	x	Zakat paid by customers
202		PT. SANGGADELIMA NUSANTARA	x	x	x	x	x	x	x	x	v	x	x	ID?
203	07UPK	ZIS PERMIQA - QATAR CHARITY	x	x	x	x	x	x	x	x	v	x	x	Receiving zakat from a zakat agency
204	08CW	SKI INDOSAT	x	x	x	x	x	x	x	x	v	v	v	
205	08DMU	PT. KARYA AZIZ	x	x	x	x	x	x	x	x	v	x	x	
206		BDI INFOMEDIA NUSANTARA	x	x	x	x	x	x	x	x	v	x	x	ID?

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
207	08IVA	PT. ARTEL INDOKARYA	x	x	x	x	x	x	x	x	v	v	v	
208	08RD	HOTEL TRANSIT	x	x	x	x	x	x	x	x	v	v	x	
209	09OFF	PT. SOLUSI MEDIA SEMESTA	x	x	x	x	x	x	x	x	v	v	v	
210		PT. MID	x	x	x	x	x	x	x	x	v	x	x	ID? 2007 PT MI?
211		PT. KITA HOKKI/CEMPAKA PUTIH	x	x	x	x	x	x	x	x	v	x	x	ID?
212		PT. NOBI	x	x	x	x	x	x	x	x	v	v	x	ID?
213		PT. SARSAMINDO SAMPURNA	x	x	x	x	x	x	x	x	v	x	x	ID?
214		PT. TIKI SUPRAPTO	x	x	x	x	x	x	x	x	v	x	x	ID?
215		PT. GREEN SAHARA	x	x	x	x	x	x	x	x	v	x	x	ID?
216		KARYAWAN PT. SATATS	x	x	x	x	x	x	x	x	v	x	x	Zakat paid by Muslim employees
217		SKN-PT. ARSHEY	x	x	x	x	x	x	x	x	v	x	x	ID?
218		TRF REPUBLIKA/MANDIRI	x	x	x	x	x	x	x	x	v	x	x	ID? PT Republika?
219		PT. AVI KEMASINDO BPTK	x	x	x	x	x	x	x	x	v	x	x	ID?
220		PT. REJINDO	x	x	x	x	x	x	x	x	v	x	x	ID?
221		PT. LIMA TITIK SATU	x	x	x	x	x	x	x	x	v	x	x	ID?
222		PT. INTRA NUSA	x	x	x	x	x	x	x	x	v	x	x	ID?
223	02-09CY	AFICOM MEDIA KOMUNIKA	x	x	x	x	x	x	x	x	x	v	x	
224	02-09DY	CC DESIGN	x	x	x	x	x	x	x	x	x	v	v	
225	05TH	BINTAL ISLAM DIRJEN ANGGARAN	x	x	x	x	x	x	x	x	x	v	x	Zakat paid by Muslim employees
226	07HLU	PT. SENERGI PANCA KREASI	x	x	x	x	x	x	x	v	x	v	x	ID conflict: 2007 07MEQ PT. Sinerigi Panca Kreasi
227	07KER	PT. MONAKO MANUNGGAL	x	x	x	x	x	x	x	x	x	v	x	
228	08AMC	JAMAAH IBADAH SHOLAT JUMAT INDOFOOD TOWER	x	x	x	x	x	x	x	x	x	v	v	Zakat paid by a Muslim congregation
229	08TE	DONASI PELANGGAN RANTI	x	x	x	x	x	x	x	x	x	v	x	Zakat paid by customers

(Continued)

<i>No</i>	<i>ID</i>	<i>Name of companies</i>	<i>00</i>	<i>01</i>	<i>02</i>	<i>03</i>	<i>04</i>	<i>05</i>	<i>06</i>	<i>07</i>	<i>08</i>	<i>09</i>	<i>10</i>	<i>Note</i>
230	09AAAT	PT. GRAKALA	x	x	x	x	x	x	x	x	x	v	x	ID?
231	09FCV	DJENE BATIK	x	x	x	x	x	x	x	x	x	v	x	
232	09HM	PT. KAROMA BUMI WASESA	x	x	x	x	x	x	x	x	x	v	x	
233	09VWD	BADAN DAKWAH ISLAM	x	x	x	x	x	x	x	x	x	v	x	
234	09XCO	ARISAN PENSIUNAN PT. PUSRI	x	x	x	x	x	x	x	x	x	v	x	
235	09XFI	PT. MAP RESOURCES INDONESIA	x	x	x	x	x	x	x	x	x	v	x	
236	09XJD	PT. NOKIA SIEMENS NETWORKS	x	x	x	x	x	x	x	x	x	v	x	
237	09XKN	PT. DUTA MEDIA SEJAHTERA MAKMUR	x	x	x	x	x	x	x	x	x	v	x	
238	09YRH	PT. INVIGO KOMUNIKA UTAMA	x	x	x	x	x	x	x	x	x	v	x	
239	09ZEM	SEKOLAH ISLAM TERPADU AL-MUFTI	x	x	x	x	x	x	x	x	x	v	x	
240	09ZHS	SD ISLAM DARUNNAJAH	x	x	x	x	x	x	x	x	x	v	x	
241	09ZQH	PT. MARUTI UNGGUL	x	x	x	x	x	x	x	x	x	v	x	
242		PT. DMM	x	x	x	x	x	x	x	x	x	v	x	ID? DMM?
243	010BCU	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
244	010OH	PT. WIJAYA PERDANA	x	x	x	x	x	x	x	x	x	v	x	
245	03AOR	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
246	03IMO	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
247	03KYE	PT. SAMPOERNA TELEKOMUNIKASI INDONESIA	x	x	x	x	x	x	x	x	x	v	x	
248	03KYG	PUSAKA TRADISI IBU	x	x	x	x	x	x	x	x	x	v	x	
249	03KYJ	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
250	04AB	PT. SARANA LINTAS CARAKA	x	x	x	x	x	x	x	x	x	v	x	

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
251	04AQO	PT. MUTUAGUNG LESTARI	x	x	x	x	x	x	x	x	x	v	x	ID conflict: 04AQO Arifin Lambaga?
252	05ATR	PT. ALFA KREASITAMA	x	x	x	x	x	x	x	x	x	v	v	
253	05BJ	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
254	05FF	PT. INTRALAB EKATAMA BOGOR	x	x	x	x	x	x	x	x	x	v	v	
255	07NU	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
256	07PKK	MAJELIS TALIM PEMBINAAN PENDIDIKAN	x	x	x	x	x	x	x	x	x	v	x	Zakat paid by a Muslim congregation
257	07PO	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
258	07TSI	PT. ASKRIDA SYARIAH	x	x	x	x	x	x	x	x	x	v	v	
259	08AGC	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
260	08DUQ	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
261	08TE	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
262	08XG	PT. SENATAMA	x	x	x	x	x	x	x	x	x	v	v	
263	09ACTJ	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
264	09ADKL	PT. ANDIARTA DEWATA	x	x	x	x	x	x	x	x	x	v	x	
265	09ADSI	PT. JAMSOSTEK CAB BEKASI	x	x	x	x	x	x	x	x	x	v	x	
266	09ADTH	PT. MITRA SOLUSI DINA	x	x	x	x	x	x	x	x	x	v	x	
267	09ADTI	PT. BESTARI BUANA	x	x	x	x	x	x	x	x	x	v	x	ID conflict: 2007 07IW1 PT. Bestari Buana Murni?
268	09IJB	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
269	09KDB	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
270	09KDQ	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
271	09KEL	SALON GEULIS CIBUBUR	x	x	x	x	x	x	x	x	x	v	x	
272	09NCM	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
273	09OPC	PT. OIL TRACORINDO	x	x	x	x	x	x	x	x	x	v	x	
274	09PLZ	?	x	x	x	x	x	x	x	x	x	v	x	Company name?
275	09QCS	PT. PERMODALAN BMT VENTURA	x	x	x	x	x	x	x	x	x	v	v	

(Continued)

No	ID	Name of companies	00	01	02	03	04	05	06	07	08	09	10	Note
276	09TFG	PT. SEMBERANI PERSADA OIL	x	x	x	x	x	x	x	x	x	v	v	
277	09VHR	FOREMOST MARITIME PTE. LTD	x	x	x	x	x	x	x	x	x	v	x	
278	09VIG	PRIMASOURCE ASIA PRP	x	x	x	x	x	x	x	x	x	v	x	Company name?
279	09YAZ	?	x	x	x	x	x	x	x	x	x	v	x	ID?
280		PERMATA SYARIAH PD INDAH	x	x	x	x	x	x	x	x	x	v	x	ID?
281		PT. NOBI	x	x	x	x	x	x	x	x	x	v	x	ID?
282		PT. SOLUSI	x	x	x	x	x	x	x	x	x	v	x	ID?
283		PT. QUAP TOTAL SERVI	x	x	x	x	x	x	x	x	x	v	x	ID conflict: 010AMQ
284	010AMQ	YAYASAN BINTANG TIARA SEJAHTERA	x	x	x	x	x	x	x	x	x	x	v	Kary Refconind?
285	010CDS	PT. MIZAN DIAN SEMESTA	x	x	x	x	x	x	x	x	x	x	v	
286	010DMW	PT. ASPIRASI INDONESIA RESEARCH INSTITUTE	x	x	x	x	x	x	x	x	x	x	v	
287	010EN	CASTROL INDONESIA	x	x	x	x	x	x	x	x	x	x	v	
288	010OJ	PERTAMINA UBEP LIMAU	x	x	x	x	x	x	x	x	x	x	v	
289	010QB	MAJELIS TA'LIM ULUL ALBAB REKIN	x	x	x	x	x	x	x	x	x	x	v	Zakat paid by a Muslim congregation
290	010WL	CV. CIPTA INSAN MANDIRI	x	x	x	x	x	x	x	x	x	x	v	
291	061UI	MAJELIS TA'LIM REKAYASA INDUSTRI	x	x	x	x	x	x	x	x	x	x	v	Zakat paid by a Muslim congregation
292	090OI	PT. WASECO TIRTA	x	x	x	x	x	x	x	x	x	x	v	
293	010ABK	PT. MORA ADVERTISING CONTENTS	x	x	x	x	x	x	x	x	x	x	v	
294	010 ACQ	SARANA PRIMA TELEMATIKA	x	x	x	x	x	x	x	x	x	x	v	
295		PT. ASURANSI JASINDO TAKAFUL	x	x	x	x	x	x	x	x	x	x	v	ID?
296	010AMQ	KARY REFCONIND	x	x	x	x	x	x	x	x	x	x	v	ID conflict: 010AMQ Yayasan Bintang Tiara Sejahtera

(Continued)

ANNEX III: CORPORATE ZAKAT PAYMENT IN BAZNAS 2000–2010

No	Name of companies	Address	00	01	02	03	04	05	06	07	08	09	10	Note
1	BNI MULTIFINANCE	Jakarta Pusat						v	?	?	?	?	?	No information: continuation of payment?
2	PT. TUNAS RIZKI SEMESTA	Jakarta Selatan						v	?	?	?	?	?	IDEM?
3	PT. VISI MEDIA VISUALINDO	Jakarta Selatan						v	?	?	?	?	?	IDEM?
4	BNI	Jakarta						v	?	?	?	?	?	IDEM?
5	PT. PLN	?						v	?	?	?	?	?	IDEM?
6	PT. MILA SARI BOGA	?						v	?	?	?	?	?	IDEM?
7	PT. ARTHALOKA INDONESIA	Jakarta Pusat						v	?	?	?	?	?	IDEM?
8	PT. PRAKARYA ENGINEERING & SERVICE	Jakarta Pusat						v	?	?	?	?	?	IDEM?
9	RAMAKO MAGIC 106.15 FM	Jakarta Pusat						v	?	?	?	?	?	IDEM?
10	AIR PUTIH PRODUCTION	?						v	?	?	?	?	?	IDEM?
11	PT. NOEL RC	Jakarta						v	?	?	?	?	?	IDEM?
12	PAPA RON'S PIZZA	Jakarta Selatan						v	?	?	?	?	?	IDEM?
13	BANK MANDIRI	Jakarta Pusat						v	?	?	?	?	?	IDEM?
14	SENTRA MEDIA PARIWARA	Jakarta						v	?	?	?	?	?	IDEM?
15	PT. ARSHEY	Jakarta						v	?	?	?	?	?	IDEM?
16	PT. TIP TOP	Jakarta Timur						v	?	?	?	?	?	IDEM?
17	KLIK SILATUN KARIMAH	Jakarta Pusat						v	?	?	?	?	?	IDEM?
18	PT. PP (PERSERO)	Jakarta						v	?	?	?	?	?	IDEM?
19	PT. KREASI RANCANG IMAJI	Jakarta Selatan						v	?	?	?	?	?	IDEM?
20	BANK SYARIAH MANDIRI	Jakarta Pusat						v	?	?	?	?	?	IDEM?
21	BANK JABAR	Bandung						v	?	?	?	?	?	IDEM?
22	BUKOPIN/BAITUL MAAL BUKOPIN	Jakarta Pusat						v	?	?	?	?	?	IDEM?
23	PT. BANK BRI	Jakarta Selatan						v	?	?	?	?	?	IDEM?
24	BANK MEGA SYARIAH INDONESIA	Jakarta Selatan						v	?	?	?	?	?	IDEM?

(Continued)

No	Name of companies	Address	00	01	02	03	04	05	06	07	08	09	10	Note
25	BANK NIAGA	Jakarta Selatan						v	?	?	?	?	?	IDEM?
26	BANK BII SYARIAH	Jakarta Pusat						v	?	?	?	?	?	IDEM?
27	PT. BANK PERMATA SYARIAH	Tangerang						v	?	?	?	?	?	IDEM?
28	PT. BANK DANAMON SYARIAH	Jakarta Selatan						v	?	?	?	?	?	IDEM?
29	PT. BANK NEGARA INDONESIA SYARIAH	Jakarta Pusat						v	?	?	?	?	?	IDEM?
30	KAMPUS STIE STMIK JAYAKARTA	Jakarta Pusat						v	?	?	?	?	?	No information: continuation of payment?
31	PT. NAFINDO MITRA SEMESTA	Bekasi						v	?	?	?	?	?	IDEM?
32	USAHA JAYA FICO OPR	Jakarta						v	?	?	?	?	?	IDEM?
33	WISMA MULIA	Jakarta						v	?	?	?	?	?	IDEM?
34	PT. GENDHIS	Jakarta Selatan						v	?	?	?	?	?	IDEM?
35	PT. PUNDI ARTHA SETIA	Jakarta Selatan						v	?	?	?	?	?	IDEM?
36	PT. BANGUN SEGARA	Jakarta Selatan						v	?	?	?	?	?	IDEM?
37	PT. FORTUNE PR	Jakarta Selatan						v	?	?	?	?	?	IDEM?
38	PT. (PERSERO) BIRO KLASIFIKASI INDONESIA	Jakarta Pusat						v	?	?	?	?	?	IDEM?
39	PT. INTER NUSA HASTA BUANA	Jakarta Pusat						v	?	?	?	?	?	IDEM?
40	PT. REKA MITRAYASA KOMUNIKATAMA	Jakarta Selatan						v	?	?	?	?	?	IDEM?
41	PT. AGRA DWAYAGA VISUAL	Jakarta Pusat						v	?	?	?	?	?	IDEM?
42	PT. BHANDA GHARA REKSA	Jakarta Selatan						v	?	?	?	?	?	No information: continuation of payment?
43	PT. KERTAJAYA UTAMA	?												
44	PT. FADIARPURNAMA PRATAMA INTI	Jakarta Selatan						v	?	?	?	?	?	IDEM?

(Continued)

No	Name of companies	Address	00	01	02	03	04	05	06	07	08	09	10	Note
45	PT. DIRGABHAKTI GIRIPERSADA	Jakarta Timur								v	?	?	?	IDEM?
46	PT. ANISBI NUNGGAL BHAKTI	Jakarta Timur								v	?	?	?	IDEM?
47	PT. MOLEX	?								v	?	?	?	IDEM?
48	KHOLAM PUBLISHING	Tangerang								v	?	?	?	IDEM?
49	IHA CORPORATION	?								v	?	?	?	IDEM?
50	PT. SENYUM WARALABA INDONESIA	Jakarta Selatan								v	v	?	?	It is still paid in 2009?
51	PT. TETRA DUA SISI	Jakarta Barat								v	v	?	?	IDEM?
52	PT. REINDO UNIT USAHA SYARIAH	Jakarta Pusat								v	v	?	?	IDEM?
53	PT. REASURANSI NASIONAL INDONESIA	Jakarta Pusat								v	v	?	?	IDEM?
54	PT. CATURMUKTI PRATAMA	Jakarta Barat								v	v	?	?	IDEM?
55	PT. ADANI WICAKSANA MANDIRI SEJAHTERA	Jakarta Timur								v	v	?	?	IDEM?
56	PT. BSP	Jakarta								v	v	?	?	IDEM?
57	PT. STACO JASA PRATAMA	Jakarta Pusat								v	v	?	?	IDEM?
58	WISMA ETHIKA NUSAS	?								v	v	?	?	IDEM?
59	PT. DARMA BUANA GEMILANG	Jakarta Selatan								v	v	?	?	IDEM?
60	PERUM PEGADAIAN	Jakarta Pusat								v	v	?	?	IDEM?
61	ISKA GROUP	Jakarta Pusat								v	v	?	?	IDEM?
62	PT. SURVEYOR INDONESIA	Jakarta Selatan								v	v	?	?	IDEM?
63	PT. BANGUN PUTRA PESAKA	Jakarta Utara								v	v	?	?	IDEM?
64	PT. BINTANG INOYA CITRA	Jakarta Barat								v	v	?	?	IDEM?
65	SAHNAZ NOERDIN SARI LAW FIRM	Jakarta Selatan								v	v	?	?	IDEM?
66	PT. MITRA INT' MANAJEMEN CONSULTING	Jakarta Selatan								v	v	?	?	IDEM?

(Continued)

No	Name of companies	Address	00	01	02	03	04	05	06	07	08	09	10	Note
67	INTI KARSA DINAMIK	?										v	?	No information: continuation of payment? IDEM?
68	AL AZHAR ASY-SYARIF INDONESIA	Jakarta Selatan										v	?	IDEM?
69	PT. BAKRIE SUMAT	?										v	?	IDEM?
70	PRO ENGLISH	?										v	?	IDEM?
71	PT. PNM PERSERO	Jakarta Pusat										v	?	IDEM?
72	QUANTUM HEALING	?										v	?	IDEM?
73	PT. PERTAMINA	Jakarta Pusat										v	?	IDEM?
74	PT. TISTAMA ARGA RAYA	Jakarta Pusat										v	?	IDEM?
75	PT. PUPUK KALTIM	Jakarta Pusat										v	?	IDEM?
76	PT. TELKOM	Bandung										v	?	IDEM?
77	PT. SCOREINDO KONSULTAMA	Jakarta Pusat										v	?	IDEM?
78	PT. LAKEMBA CITRA INDONESIA	Jakarta Selatan										v	?	IDEM?
79	MASTER COMPUTER	Bogor										v	?	IDEM?
80	RUMAH MAKAN WONG SOLO DEPOK	Depok										v	?	IDEM?
81	PT. MITRAMAS INFOSYS GLOBAL	?										v	?	IDEM?
82	PT. PNM INVESTMENT MANAGEMENT	Jakarta Pusat										v	?	IDEM?
83	PT. PRIMA HANDANU BHAKTI	Jakarta Selatan										v	?	IDEM?
84	UNIVERSITAS INDRAPRASTA PGRI	Jakarta Selatan										v	?	IDEM?
85	PT. GASWARA INTERNATIONAL	Cikuray										v	?	IDEM?
86	PT. DANA USAHA MAKMUR	Jakarta Pusat										v	?	IDEM?

(Continued)

No	Name of companies	Address	00	01	02	03	04	05	06	07	08	09	10	Note
87	PT. CIPTA GEMILANG KARYATAMA	Jakarta Pusat										v	?	IDEM?
88	PT. REASURANSI INTERNATIONAL INDONESIA	Jakarta Pusat										v	?	IDEM?
89	PT. WAHANA INVESTASI NUSANTARA	Jakarta Pusat										v	?	IDEM?
90	PT. SUCOFINDO	Jakarta Selatan										v	?	IDEM?
91	PT. INSAN MEDIA PRATAMA	Jakarta Pusat										v	?	IDEM?
92	PT. GS 1 INDONESIA	Jakarta Pusat										v	?	IDEM?
93	PT. 25 FRAME	Jakarta Pusat										v	?	IDEM?
94	PT. SAMUDRA SHIPPING SERVICE	Jakarta Barat										v	?	IDEM?
95	BPR SYARIAH AMANAH UMMAH	Bogor										v	?	IDEM?
96	RISK EXPERT SOLUTIONS	Jakarta Pusat										v	?	IDEM?
97	TOKO MARLINA	Jakarta Pusat										v	?	IDEM?
98	PT. UFAR	Jakarta Pusat										v	?	IDEM?
99	PT. GATRA HITA WASANA	Jakarta Selatan										v	?	IDEM?
100	PT. BANGUN PUTRA KARAWANG	Teluk Jambe Timur										v	?	IDEM?
101	PT. RINDANGSAKTI DAMAI	Jakarta Utara										v	?	IDEM?
102	PT. ADONARA BAKTI BANGSA	Jakarta Pusat										v	?	IDEM?
103	DYNAMIC CONSULTANT	Jakarta Timur										v	?	IDEM?
104	RABITHAH ALAWIYAH	Jakarta Selatan										v	?	IDEM?
105	PT. PRAWEDA Ciptakarsa Informatika	Jakarta Barat										v	?	IDEM?
106	PT. EPSYLON CITRA Informatika	Jakarta Selatan										v	?	IDEM?
107	PT. VINCCINDO ASIA SEPATU	Jakarta Selatan										v	?	IDEM?

(Continued)

No	Name of companies	Address	00	01	02	03	04	05	06	07	08	09	10	Note
108	BNI SYARIAH	?											v	No information: continuation of payment?
109	PT. ADICITA PANCAWARNA	Jakarta Timur											v	
110	PT. KAFALA ARZUDA	Jakarta Pusat											v	
111	BNI SYARIAH PRIMA JAKARTA	Jakarta Pusat											v	The same as BNI Syariah No. 108?
112	PT. INTI NUANSA CIPAVISI	Jakarta Selatan											v	
113	GRSYN	Depok											v	?
114	FIKA & COMIX	Jakarta											v	
115	MOELEM HOUSE	Bekasi											v	
116	PT. AIDA INFINI MAKSIMA	Jakarta Selatan											v	
117	PT. JINGGA SAFFRON ARTISTIKA	Jakarta Pusat											v	
118	PT. ASURANSI EKSPOR INDONESIA (PERSERO)	Jakarta Selatan											v	
119	KEBAB BABA RAFI	Jakarta Selatan											v	
120	PT. PATRA DINAMIKA	Jakarta Barat											v	
121	PT. AMANDA GUMULUNG SEJAHTERA	Jakarta Selatan											v	
122	PT. BAWANA MARGATAMA	Jakarta Selatan											v	
123	PT. RIG TENDERS INDONESIA TBK	Jakarta Selatan											v	
124	PT. GRUP RISET POTENSIAL	Jakarta Pusat											v	
125	PT. KORATH	Jakarta Utara											v	
126	PT. ARGAS BANGUN BANGSA	Jakarta Selatan											v	
127	PT. SAPTA SENTOSA	Jakarta Selatan											v	

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